**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER: Order/MC/VS/2022-23/16652-16653]**

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**UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SCRA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005**

**In respect of –**

1. **Sangeeta Gulati** (PAN: AGVPG6698R) having address at G-177 Pushkar Enclave Paschim Vihar Delhi 110063
2. **Ashish Gupta** (PAN AEUPG4448J) having address at C U-6, Pitampura Delhi, 110034

***In the matter of Educomp Solutions Ltd.***

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## BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated adjudication proceedings against Sangeeta Gulati ("**Noticee 1"**) and Ashish Gupta ("**Noticee 2**") (hereinafter collectively referred to as "**the Noticees"**) under Section 23H of Securities Contracts (Regulation) Act, 1956 **("SCRA")** for alleged violation of clause 49 (V) (a) of the Listing Agreement read with regulation 103 (2) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 ("**LODR Regulations")** pursuant to investigation into alleged manipulation of books of accounts of Educomp Solutions Ltd (hereinafter referred to as "**Educomp**/"**the Company**") between 01.04.2008 to 31.03.2015 ("**the investigation period").**

## APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer ("**ÁO**") vide order dated March 26, 2021 to inquire into and adjudge under Section 23-I of the Securities Contracts (Regulation) Act, 1956 ("**SCRA**") read with Rule 3 of the SCRA (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter be referred to as the "**SCRA Adjudication Rules**") the aforesaid alleged violations by the Noticees. The appointment of the undersigned as AO was communicated vide order dated April 1, 2021.

## SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice ("**SCN"**) No. EAD5/MC/VS/2021/10331/1&2 dated 14.05.2021 was issued to the Noticees. The allegations levelled against the Noticees in the SCN are summarized as follows:-

4. A complaint dated February 10, 2015 was received by SEBI from an advocate, Shri Sourabh Luthra, alleging that the company Educomp Solutions Ltd. had written off more than Rs.900 Cr of trade receivables which were in fact inflated sales or capital advances given for purchase of fixed assets against false bills through which promoter Shri Shantanu Prakash has siphoned off money. Therefore, an investigation was initiated to ascertain the veracity of the allegations made in the complaint.

5. Educomp was founded in 1994 and it operates in the education sector by providing IT enabled education package at pre-school and K-12 schools. The company got its shares listed on the Bombay Stock Exchange and National Stock Exchange in the year 2006. The Company derives its revenue from sale, supply and installation of educational products and rendering of educational services.

6. At present, the Company is under the Insolvency Proceedings and vide an order dated May 30, 2017, Hon'ble NCLT initiated the Corporate Insolvency Resolution

Process of the Company as per the provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC") and NCLT vide its order dated September 12, 2017 appointed Mr. Mahender Khandelwal having IP Registration no. IBBI/IPA001/IP-P0003312016-17/10086 as the Resolution professional (IRP") for the Company. At present, as per the provisions of the Section 17 and 18 of IBC, the powers of the directors and management of the Company are suspended.

7. Board of Directors**:** The Board of Directors during the investigation period was as under:

| S. No. | Name | Designation | Date of Joining | Date of Resignation |
|---|---|---|---|---|
| 1. | Shantanu Prakash | MD & CEO | 09/07/1994 | N.A |
| 2. | Shonu Chandra | Non Executive-Independent Director | 09/08/2003 | 29/05/2015 |
| 3. | Jagdish Prakash | Whole Time Director | 19/02/2005 | 13/11/2013 |
| 4. | Sankalp Srivastava | Non Executive-Independent Director | 09/08/2003 | 13/11/2013 |
| 5. | Shayama Chona | Non Executive-Independent Director | 26/08/2009 | 29/07/2013 |
| 6. | Rajiv Krishan Luthra | Non Executive-Independent Director | 26/08/2009 | 22/11/2013 |
| 7. | Roy Campbell II | Non Executive-Non-Independent Director | 11/09/2012 | 15/01/2014 |
| 8. | Gopal Jain | Non Executive-Independent Director | 23/08/2005 | 27/07/2012 |
| 9. | Manav Saraf | Non Executive-Non-Independent Director | 26/07/2012 | 11/07/2012 |
| 10. | Vijay Kumar Choudhary | Non Executive-Independent Director | 13/11/2013 | N.A |
| 11. | Rajat Khare | Non Executive-Independent Director | 13/11/2013 | N.A |
| 12. | Vinod Kumar Dandona | Whole Time Director | 13/11/2013 | N.A |
| 13. | Swati Sinha | Non Executive-Independent Director | 29/09/2014 | N.A |
| 14. | Venkata Subbarao Valluri | Non Executive-Independent Director | 31/07/2013 | N.A |
| 15. | Azra Shauqia Hasan | Non Executive-Independent Director | 28/05/2015 | N.A |

(*Source: Reply of the Company, Annual Report 2010-11 to 2014-15)*

8. Shareholding Pattern: The total share capital of Educomp during the investigation period was 3,20,47,811 shares. The shareholding pattern of the company during the investigation period is as under –

| Descriptions | Mar - 11 | | Mar -12 | | Mar - 13 | | Mar - 14 | |
|---|---|---|---|---|---|---|---|---|
| | No. of Shares | % of Share | No. of Shares | % of Share | No. of Shares | % of Share | No. of Shares | % of Share |
| Promoters | 19068867 | 59.50% | 19068867 | 59.50% | 19068867 | 59.50% | 19068867 | 59.50% |
| F IIs | 7052315 | 22.01% | 653258 | 20.38% | 6913236 | 21.57% | 7061381 | 22.03% |
| Insurance Comapanies | 1192572 | 3.72% | 1163029 | 3.63% | 1092730 | 3.41% | 0 | 0.00% |
| Mutual Funds/ UTI/Bank | 1862414 | 5.81% | 1174371 | 3.66% | 605331 | 1.89% | 14399 | 0.04% |
| Bodies Corporate | 1028099 | 3.21% | 1090789 | 3.40% | 1272162 | 3.97% | 2085629 | 6.51% |
| Individuals/ Others | 1843544 | 5.75% | 3018197 | 9.42% | 3095485 | 9.66% | 3817535 | 11.91% |
| **Total** | **32047811** | **100.00%** | **32047811** | **100.00%** | **32047811** | **100.00%** | **32047811** | **100.00%** |

9. From the table above, it was seen that there is no change in promoters' shareholding from March 2011 to March 2014.

10. Financial Results: The annual financial results of Educomp covering the period of Investigation are summarized as follows:

| Particulars | 2014-15 | 2013-14 | 2012-13 | 2011-12 | 2010-11 | 2009-10 | 2008-09 |
|---|---|---|---|---|---|---|---|
| **INCOME :** | | | | | | | |
| **Net Operating Income** | 518.20 | 634.82 | 1,210.93 | 1,491.28 | 1,350.90 | 1,039.49 | 637.06 |
| **Other Income** | 75.99 | 90.44 | 115.50 | 34.45 | 49.37 | 126.39 | 22.93 |
| **Stock Adjustments** | -1.01 | (9.50) | (8.70) | 43.75 | 10.42 | 3.77 | 29.41 |
| **Total Income** | 593.18 | 715.76 | 1317.73 | 1569.48 | 1410.69 | 1169.65 | 689.4 |
| **EXPENDITURE :** | | | | | | | |
| **Cost of Traded Software Packages** | 31.54 | 112.58 | 378.19 | 474.45 | 326.42 | 178.76 | 140.44 |
| **Operating Expenses** | | 22.19 | 31.59 | 30.86 | 29.97 | 27.38 | 10.89 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Employee Cost** | 249.91 | 271.78 | 354.41 | 328.09 | 257.24 | 179.29 | 115.50 |
| **Power/Electricity Charges** | | 4.40 | 5.51 | 6.29 | 5.40 | 2.69 | 1.36 |
| **Selling and Administration Exp.** | | 165.31 | 218.18 | 222.92 | 177.13 | 155.29 | 86.62 |
| **Other Expenses** | 238.88 | 4.30 | 11.42 | | | | |
| **Provisions /write offs** | 1265.04 | 221.72 | 88.05 | 13.91 | 8.96 | 9.60 | 5.49 |
| **Foreign exchange Difference** | 45.66 | 12.52 | 11.39 | 45.34 | - | 3.39 | - |
| **Depreciation** | 94.91 | 108.35 | 121.80 | 106.97 | 84.08 | 114.23 | 81.44 |
| **Total Expenditure** | 1925.94 | 923.15 | 1,220.54 | 1,228.83 | 889.20 | 670.63 | 441.74 |
| **Operating Profit** | -1332.76 | -207.39 | 97.19 | 340.65 | 521.49 | 499.02 | 247.66 |

11. The financial results of Educomp reported profit for each financial years from FY 2009-10 till FY 2013. From the FY 2013-14 onwards, there is sharp decrease in sales and total revenue of the company. In its Annual Report for the Year 2013-14, the Company stated that the decrease is on account of change in revenue and cost recognition method from upfront recognition to recognition for the period of rendering services to its vendors/clients. Further, the above table shows that the reason for significant decrease in the operating profit was increase in the provisions and write offs. The provisions and write offs increased drastically from Rs. 5 Cr approx. in the FY 2008-09 to approx. Rs.1265.04 Cr in the FY 2014-15.

12. An analysis of company's provisions/write offs during F.Y. 2012-13, F.Y. 2013-14 and F.Y. 2014-15 as per the Schedules forming part of the financial statements and notes showed that the provision/write offs were significant for FY 2013-14 and FY 2014-15. The breakup of company's provisions/write offs during F.Y. 2012-13, F.Y. 2013-14 and F.Y. 2014-15 as per the Schedules forming part of the financial statements and notes was as follows:-

| **Provision/written off (in Rs.Cr)** | **2014-15** | **2013-14** | **2012-13** |
|---|---|---|---|
| Bad debts written off | - | 0.08 | 14.46 |
| Provision on doubtful trade receivables (Debt) | 650.23 | 117.41 | 12.08 |
| Provision on doubtful capital advance | 290.06 | 100.79 | 45.54 |
| Pre closure discount and warranty | 60.08 | - | - |

| | | | |
|---|---|---|---|
| Loss of sale of investment | - | - | 2.66 |
| Loss of sale on fixed Assets (includes land) | 32.51 | 2.07 | 0.57 |
| Provision for loss on sale of fixed assets (includes land ) | 28.55 | 1.37 | - |
| Provision for diminution in the value of long term investment | - | - | 12.75 |
| brand valuation | 45.27 | - | - |
| Others | 158.40 | - | - |
| **Total** | **1,265.10** | **221.72** | **88.05** |
| **Total Income** | **593.18** | **715.76** | **1317.73** |
| **Total Expenditure** | **1925.94** | **923.15** | **1,220.54** |
| **Operating Profit** | **-1332.76** | **-207.39** | **97.19** |

13. In general, provisioning for doubtful recoverable is the prerogative of the company based on the judgment of the management. However, the provision made by the company during 2013-14 and 2014-15 is Rs.221.72 Cr and Rs.1265.10Cr is to the extent of 24.01% and 65.68 % of its total expenditure for the respective financial Years.

14. From the annual reports of the company, it was seen that Educomp had acquired trade receivable of Edu Smart Services Pvt. Ltd. ("**ESSPL"**), a subsidiary of the Company, amounting to Rs.1,034.92 Cr in FY 2013-14 and Rs.149.86 Cr in FY 2014-15 as per mandate of CDR package. This acquisition was undertaken vide a trade receivables purchase agreement dated March 31, 2014 between Educomp and ESSPL.

15. As per information submitted by Educomp, a total provision for doubtful debt of Rs.503.28 Cr (including Rs.449.66 Cr for the transferred trade receivables for 4949 contracts) and Rs.248.66 Cr against receivables from ESSPL was created during FY 2014 and 2014-15. It was submitted by Educomp that provisions are created on the basis of stock & receivable audit report, prudent accounting practice of delays in collection and status of current litigation.

16. Provision on doubtful trade receivables was Rs.117.41Cr and Rs.650.23Cr for the FY 2013-14 and FY2014-15 and constitutes more than 50% of total provision for the respective years.

17. The company provided the details of clients for which provisions were made during FY 2013-14 and FY 2014-15. The Company made provisions on doubtful trade receivables from a total of 42 Clients and 5,496 Clients amounting to Rs.116.54 Cr and Rs.650.23 Cr for FY 2013-14 and FY 2014-15 respectively.

18. An analysis of clients for which provisions on trade receivables were made is given as under:

| Sl. No. | Clients for which total provision amount (X) in FY 2013-15 (2FY) | FY2013-14 | | FY2014-15 | |
|---|---|---|---|---|---|
| | | Number of entities (B) | Amount (Rs.Lac) (C) | Number of entities (D) | Amount (Rs.Lac) (E) |
| | | | | | |
| 1 | 0 < X ≤ 1,00,000 | 3 | 2.09 | 407 | 184.59 |
| 2 | 100001 < X ≤ 10,00,000 | 24 | 100.19 | 3433 | 13031.71 |
| 3 | 10,00,001 < X ≤ 100,00,000 | 9 | 275.94 | 1644 | 33488.29 |
| 4 | X ≥100,00,000 | 5 | 1478.92 | 11 | 3249.34 |
| 5 | Entities related to Educomp | 1 | 9797.16 | 1 | 15069.53 |
| | **Total** | **42** | **11654.31** | **5496** | **65023.48** |

19. For the FY 2013-14, total provision of trade receivables from 36 entities (Sl. No. 1 to 3 in the above table) constituted 3.20% of total trade receivables, whereas, 96.8% of provision of trade receivables was made against the receivables from the remaining 6 (Sl. No. 4 and 5 in the above table) entities. For the FY 2014-15, total provision of trade receivables from 3840 entities (Sl. No. 1 and 2 in the above table) constituted 20% of total trade receivables.

20. The company had made provision for an amount of Rs.150.69Cr (23% of total provision amount ) and Rs.97.97Cr (84% of total provision amount) for FY 2014-15 and 2013-14 respectively against trade receivables from Edu Smart Services Pvt. Ltd.(“**ESSPL**”) which is a subsidiary of the company which used to provide the hardware and the hard disk containing the Repository as procured from ESL, together with the support services and consumables to the concerned schools in relation to the Smart Class Program.

21. The matter of trade receivables against ESSPL and creation of provision is examined below.

22. Educomp had made provision for an amount of Rs.150.69Cr (23% of total provision amount) and Rs.97.97Cr (84% of total provision amount) for FY 2014-15 and 2013-14 respectively against trade receivables from Edu Smart Services Pvt. Ltd. Additionally, Educomp submitted that an amount of Rs.705.40Cr and Rs.817.61Cr for FY 2014-15 and 2013-14 respectively is trade receivable from ESSPL for which no provisions were made.

23. From the replies and annual reports it is seen that in FY 2009-10, Educomp changed its business model from “BOOT” (build, owned, Operate and transfer) to an “Out Right Sale” business in Smart Class business segment. In the earlier scenario, revenue from hardware, content & services were recognized rateably over the contract period, while via “Out Right Sale”, Educomp sold the hardware and provided the license of educational content for the contract period on upfront basis. Subsequently, Educomp signed a “Business Transfer Agreement (BTA)” and transferred its “Boot Business” relating to all existing smart class contracts signed under “boot basis” to a third party vendor together with a license to use the Smart Class content and repository. Accordingly, Educomp transferred the business in tranches starting from 2nd quarter of financial year 2009-10 and completed by 31st March 2010, whereby 2390 contracts under BOOT business were transferred to a third party vendor. As per the Annual Reports of Educomp, the Board of Directors and Shareholders of Educomp had approved the above said outsourcing or transfer to the third party in terms of Section 192A and 293

(1) (a) of the Companies Act, 1956 on 30th October, 2009 and on December 23rd, 2009 respectively.

24. From the replies of Educomp it was seen that that the said business was transferred to ESSPL. ESSPL was one of the parties to the tri-partite agreements between Educomp and schools for the sale of smart class wherein ESSPL used to provide the hardware and the hard disk containing the repository as procured from Educomp, together with the support services and consumables to the concerned schools in relation to the Smart Class Program. In all such cases, Educomp used to invoice to ESSPL an amount equivalent to 70% of the total agreement value which included invoices pertaining to the Hardware supplied (Hardware Invoice) and the Content (Content Invoice). ESSPL made payment to Educomp through securitization proceeds received from banks/institutions immediately on receipt of the same from banks and the balance was paid over the period of contracts as and when received from the respective schools.

25. Subsequently, in FY 2013-14, Educomp acquired trade receivable of ESSPL amounting to Rs.1,034.92 Cr in FY 2013-14 and Rs.149.86 Cr in FY 2014-15. This acquisition was undertaken vide a trade receivables purchase agreement dated March 31, 2014 between Educomp and ESSPL. As per the said agreement, total trade receivables from ESSPL was Rs.1203.23 Cr. This acquisition was undertaken on the mandate of approved CDR scheme of the lending banks. This transaction was subsequently reported as related party transaction under section 188 of the companies Act 2013 in Annual Report of Educomp for FY 2013-14 and FY 2014-15. As per information submitted by Educomp, a total provision for doubtful debt of Rs.503.28 Cr (including Rs.449.66 Cr for the transferred trade receivables for 4949 contracts) and Rs.248.66 Cr against receivables from ESSPL was created during FY 2013-14 and 2014-15. It was submitted by Educomp that provisions were created on the basis of stock & receivable audit report, prudent accounting practice of delays in collection and status of current litigation.

Examination of connection between Edu Smart Services Private Limited (ESSPL) and Educomp

26. Edu Smart Services Private Limited (ESSPL) was incorporated on July 02, 2009 and its registered office is at Flat No 13 J, Thirteen Floor, 25, Gopala Tower, Rajendra Place, New Delhi and at present, ESSPL is undergoing Insolvency Proceedings.

27. As per incorporation records available on MCA portal, ESSPL was incorporated and promoted by Shri Abhinav Dhar who was a senior employee -director of Business & Operation, of Educomp. As per Annual reports of Educomp, the area relating to School Learning Solutions (Smart Class) was being handled by him. He was with Educomp since April 01, 2007 and resigned in FY 2014-15. Additionally, he was director in other subsidiaries of Educomp and other promoter related company at the relevant time. Shri Ashok Mehta, MD of ESSPL (from 01.10.2009 to 30.08.2013) and shareholder of ESSPL during the period of investigation, was employed by Educomp, prior to his service to ESSPL. As per Annual Report of FY 2014-15 of Educomp, Shri Ashok Mehta was again employed by Educomp with effect from Sept 01, 2013 as a senior employee designated as President –Edu Reach. Additionally, he was director in other related companies/subsidiaries at the relevant time. Shri Abhinav Dhar and Shri Ashok Mehta were KMP (as per public issue Prospectus of Educomp) of Educomp and have been reporting to Shri Shantanu Prakash. Shri Pramod Thatoi, promoter Director of ESSPL was also director in several subsidiaries of Educomp.

28. An analysis of shareholding of ESSPL since its incorporation is as under:

| | | |
|---|---|---|
| **As per MoA filed for Incorporation of ESSPL/ FY 2009-2010** | | |
| Abhinav Dhar | 5000 shares Rs.10/- | |
| Pramod Thatoi | 5000 shares Rs.10/- | Appointed as WTD wef 01.10.2009 for 5 years |
| Ashok Mehta | | Appointed as WTD wef 01.10.2009 for 5 years |
| **Shareholding for FY 2010-2011 till FY 2014-15** | | |
| Pramod Thatoi | 5000 shares Rs.10/- | No changes in shareholding reported as per its |

| | | |
|---|---|---|
| Ashok Mehta | 5000 shares Rs.10/- | latest Annual Return for FY 2017-18. |
| **Other types of issued share of ESSPL and its shareholders** | | |
| Educomp Solutions Ltd | FY 2009-10 | 20,00,000 8% cumulative Redeemable Optionally Convertible Preference Share of Rs.100/- |
| | FY 2010-11 | Increased to 45,00,000 8%Cumulative Redeemable Non-Convertible Preference shares of face value of Rs. 100 each (worth Rs.450,000,000/-) |
| M/s. Educomp Asia Pacific Pte Limited | FY 2013-14 | 54,70,929 5% Cumulative Compulsorily Convertible Preference shares of face value of Rs. 10 each to 04/01/2014 |

29. Pramod Thatoi was initial subscriber of shares of ESSPL and continue to hold 50% of its equity shares. In FY 2010-11, the shareholding of Shri Abhinav Dhar was transferred to Shri Ashok Mehta.

30. In FY 2009-10, Educomp subscribed a total 20,00,000 8%Cumulative Redeemable Non-Convertible Preference shares of face value of Rs.100 each (worth Rs. 200,000,000/-) of ESSPL. From a Board resolution filed by ESSPL to MCA it was noticed that ESSPL in its BoD held on Oct 12, 2009 had passed a resolution to allot 20,00,000 8%Cumulative Redeemable Optionally Convertible Preference Share of Rs.100/- of Rs.100/- at no premium to Educomp. It was observed that one of the authorized signatories to sign and issue the said share certificate of ESSPL was Abhinav Dhar, who also happened to be a senior employee -director of Business & Operation, of Educomp and was in-charge of School Learning Solutions (Smart Class) section.

31. Considering the above facts on record, it is evident that Educomp was controlling ESSPL as its directors were subject to the control of Educomp due to their “employee and employer relationship" and was in position to influence the management decision of ESSPL. As per section 4 (1) (a) of the Companies Act 1956, a company is deemed to be a subsidiary of another if, *other controls the composition of its Board of directors*; In view of this, it was observed that ESSPL

was in fact a subsidiary of Educomp since its incorporation, however, it was declared as a third party vendor of Educomp. Additionally, in terms of AS 18 issued by the Institute of Chartered Accountants of India (ICAI) Educomp had the practical ability to control/direct the activities of ESSPL since its incorporation and therefore, ESSPL was a subsidiary of Educomp and all its transactions with ESSPL were essentially required to be reported as related party transactions since its incorporation.

32. Educomp was also mandated to declare ESSPL as a subsidiary in the CDR by the Banks. Subsequently, Educomp in FY 2013-14, declared ESSPL as a subsidiary even when there was no change in its equity shareholding.

33. ESSPL used to be one of the parties to the tri-partite agreements between Educomp and schools for the sale of smart class wherein ESSPL used to provide the hardware and the hard disk containing the repository as procured from Educomp, together with the support services and consumables to the concerned schools in relation to the Smart Class Program. From the documents and other filings with MCA, it was observed that ESSPL has no major operations other than the aforesaid.

34. Following significant transactions were observed between Educomp and ESSPL which were reported as third party transactions during FY 2009-10, 2010-11, 2011-12 and 2012-13 instead of transaction with a subsidiary –

   a. From the AR 2009-10 of Educomp it was seen that the School Learning Solutions which comprised Smart Class & Edureach (ICT) Business which constituted 67.84% (value of Rs.4322.09 mn) of revenue and 48.63% (Value of Rs.2101.96 mn) of profit during year 2008-09, was transferred to a <u>third party vendor</u> as per BTA as mentioned above. On examination, it was observed that this third party vendor was ESSPL which was in fact controlled by Educomp and was a subsidiary, However, Educomp had disclosed the transactions with ESSPL as third party transaction instead of related party transactions and till FY 2013-14, Educomp never declared that this third party was in fact ESSPL.

b. In FY 2009-10, Educomp subscribed a total 20,00,000 8%Cumulative Redeemable Non-Convertible Preference shares of face value of Rs.100 each(worth Rs.200,000,000/-) of ESSPL. This investment was reported as investment of Educomp in other companies. In FY 2010-11, Educomp subscription of 8%Cumulative Redeemable Non-Convertible Preference shares of face value of Rs. 100 each increased to 45,00,000 shares (worth Rs.450,000,000/-) and the same was reported in its annual reports by Educomp as long term investment by the Educomp in other companies.

c. Additionally, on examination of Annual Reports of ESSPL and Educomp for the period from 2009-10 to 2014-15, it was observed that Educomp had given corporate Guarantee to all long-term loans taken by ESSPL and it was reported under Contingent liabilities as corporate guarantee given to bank for secured loan from the third party by Educomp. Year wise details are as under:-

| Year | Long term borrowing (net) of ESSPL (Rs. mn) as on March 31 | Contingent liabilities from 3rd party in AR of Educomp (Rs. mn) as on March 31 | Asset reported in Balance Sheet as on March 31 (Rs.mn) (standalone) |
|---|---|---|---|
| 2008-09 | 0 | 0 | 9,916.42 |
| 2009-10 | 6640.00 | 6650.00 | 18,168.36 |
| 2010-11 | 4,123.59 | 9,150.00 | 22,969.85 |
| 2011-12 | 11,318.89 | 12,179.13 | 31,445.78 |
| 2012-13 | 11,338.66 | 13,194.91 | 35,897.80 |
| 2013-14 | 4,479.29 | 8,482.70 | 39,886.87 |
| 2014-15 | NA | 3,000.00 | 33,975.50 |

35. From the table above, it was seen that reported contingent liabilities by third party which was corporate guarantee extended to ESSPL was more than 30% of the asset of Educomp reported in FY 2009-10, 2010-11, 2011-12 and 2012-13 which is very significant. All these transactions were reported as third party transactions by Educomp instead of related party transactions.

36. Revenue reported by Educomp from the Smart Class segment had contributed more than 90% of its total standalone revenue during FY 2009-10, 2010-11 and 2012-13.

| Year | Revenue of Educomp (Rs. mn) (standalone) | Educomp Revenue from Smart classes (Rs.mn) |
|---|---|---|
| 2008-09 | 6598.00 | 4322.09 |
| 2009-10 | 8727.12 | 8067.64 |
| 2010-11 | 10617.73 | 10094.62 |
| 2011-12 | 10,920.37 | 10476.00 |
| 2012-13 | 8,204.04 | 6274.00 |
| 2013-14 | 3171.77 | 2034.00 |
| 2014-15 | 2,322.01 | 1906.00 |

37. Educomp basically had earning in smart class segment from ESSPL by way of arrangement through which Educomp used to invoice to ESSPL an amount equivalent to 70% of the total agreement value (with the clients/entities) which include invoices pertaining to the Hardware supplied (Hardware Invoice) and the Content (Content Invoice). ESSPL made payment to Educomp through securitization proceeds received from banks/institutions immediately on receipt of the same from banks and the balance was paid over the period of contracts as and when received from the respective schools/clients. In view of this, Educomp has been earning significant part of its revenues (standalone), from the ESSPL which was a subsidiary, however, it was reported as revenue earned by Educomp.

38. In terms of AS 21 issued by the Institute of Chartered Accountants of India (ICAI), the financial statements of an enterprise controlled by the parent company is required to be consolidated. Accordingly, accounts of ESSPL were required to be consolidated. However, Educomp failed to disclose financial details of its subsidiary in its consolidated accounts.

39. Educomp had various significant transactions with ESSPL which was being controlled by Educomp since incorporation of ESSPL, and, was in fact a subsidiary of Educomp. All these transactions undertaken between these two companies which were reported in AR 2009-10, 2010-11, 2011-12 and 2012-13 as third party transaction were in reality related party transactions and needed to be disclosed in its Annual Reports as per clause 32 of Listing Agreement. In light of all aforesaid transactions which were reported as third party transactions but were in fact transactions with a subsidiary, Educomp failed to present true and fair financial statements, which amounted to misrepresentation of the accounts/ financials statement by Educomp.

40. As per clause 32 of listing agreement read with regulation 103 (2) of SEBI (LODR) Regulations, 2015, the company was to mandatorily publish Consolidated Financial Statements in its Annual Report in addition to the individual financial statements audited by the statutory auditors of the company. In addition to aforesaid, as per clause 32 and clause 49 (IV) (A) of listing agreement read with regulation 103 (2) of LODR Regulations, the company has to file disclosures in compliance with the Accounting Standard on "Related Party Disclosures" in its Annual Report including disclosure of loans/advances and investments in its own shares by the listed companies, their subsidiaries, associates etc. Hence, it was alleged that all the aforesaid transactions which were reported as third party transactions were in non-compliance of clause 32 of listing agreement and Clause 49 (IV) (A) of the Listing Agreement read with regulation 103 (2) of LODR Regulations.

41. In view of the above non disclosures of related party transactions, the financial statement in annual report for FY 2009-10, 2010-11, 2011-12 and 2012-13 did

not present a “true and fair picture” of the financial position of Educomp. Thus, certification given by Noticee 1, Ms. Sangeeta Gulati, Chief Financial Officer (“**CFO”)** (FY 2009-10, 2010-11 and 2011-12) and Noticee 2, Shri Ashish Gupta, CFO (FY 2012-13) was not correct, in alleged violation of Clause 49 (V) (a) of the Listing Agreement read with regulation 103 (2) of LODR Regulations.

42. The SCN was served upon Noticee 1 by SPAD on 24.05.2021 as per tracking details obtained from the website of India Post. The SCN was served upon Noticee 2 vide e-mail dated 19.05.2021 at his e-mail address obtained from CDSL and NSDL.

43. Vide letter dated 02.06.2021, Noticee 1 submitted the following:-

   a. The Noticee was employee in Educomp Solutions Limited till 6th March 2012, and had not signed the balance sheet for FY 11-12 due to her resignation from the CFO position on 6th March 2012 & got relieved of her services from closing hours of 25th April 2012.

   b. It’s been around 12 years now since the inception of ESSPL and around a decade of resignation of Noticee 1 from CFO position from the company. Due to passage of such a long time and sheer vintage of information, she is unable to recall / comment on the correctness of status of ESSPL as shown as Third party vendor, instead of related party, and she sincerely apologises for same.

   c. Such a disclosure must have been made depending on facts & available documents at that point of time. Noticee 1 understands that as per clause 49, all the disclosures requirements including related Parties disclosures / third party disclosures etc., were to be duly approved by Audit Committee and Board while approving & adopting Financials pertaining to a Particular Financial year. Needless to say that being a listed Company at that time, process is deemed to have been followed and Audit Committee and Board must have duly looked upon & approved those Related Party / Third Party transactions.

d. As a professional, despite being careful in applying & meeting all the requirements of various laws & applicable standards, there are always chances of any shortfall/ unintentional mistake that could have happened either due to oversight or lack of knowledge or non-availability of applicable documents etc. Therefore, a lenient view may be taken in the matter.

44. Vide hearing notices dated 17.02.2022, opportunities of hearing by videoconferencing through WebEx was provided to the Noticees 1 and 2 on 09.03.2021. The hearing notices were delivered to the physical as well as e-mail addresses of Noticees 1 and 2, as per available records.

45. Vide e-mail 14.03.2022, Noticee 2 made the following submissions:-

a. He had not received the SCN, but had only received a copy of the SCN with the hearing notice dated 17.02.2022 as the SCN and HN had been delivered to his very old Delhi address, and that since 2019 he had shifted to Mumbai and his new address was 1706, Tower A, Oberoi Exquisite, Goregaon East, Mumbai 400063.

b. Noticee 2 was the interim CFO of the Company for a very short period of time from April 26, 2012 to December 5, 2013. It's been more than 9 years (since 2013) that he was not associated with the Company. He had no access to records/documents of the Company for responding to the allegations mentioned in the SCN. He was trying to ask information from ESL and trying to collate the information/documents and contact officials of the Company to gather the information of the Company.

c. From the SCN, it was inferred that this investigation was initiated pursuant to a complaint dated February 10, 2015 received by SEBI from an advocate, Shri Sourabh Luthra. Noticee had checked about this complaint and was informed that this complaint was withdrawn by Shri Sourabh Luthra on February 3, 2016 which was addressed to Shri Gyan Bhushan, CVO of SEBI. ESL also intimated to SEBI about withdrawal of this complaint vide its letter dated March 1, 2016. Copy of said withdrawal letters from the Complainant is attached as Annexure-1 to the reply.

d. Since Noticee 2 was trying to collate information from the Company he needed 2-3 months' time as information and documents were with the Company, which was dependent upon the cooperation and provisioning records & ledgers of the ESL in this regard which was of very old period and outside the requirement of keeping books of accounts by the Company of 8 years as per the Companies Act 2013.

e. Financials of the Company were duly audited by reputed Chartered Accountant firms and in compliance with the provisions of the Companies Act for the year under reference.

f. Noticee was fully inclined to cooperate and provide the requisite information as and when required for the case under reference. However, there is limitation due to time elapsed in this case and his very short tenure in the company.

46. Vide e-mail dated 28.04.2022, the Noticee was informed that it was noted from records that the SCN was delivered to him vide e-mail dated 19.05.2021. Further, a copy of the Hearing Notice with Show Cause Notice was delivered to him physically at his address on record on 21.02.2022 as well as by e-mail on 17.02.2022. In view of the same, sufficient time to respond to the allegations in

the SCN has already been granted to him. Therefore, the Noticee was provided an opportunity of hearing on 29.04.2022 by videoconferencing through WebEx.

47. Vide reply dated 28.04.2022, Noticee 2 submitted that he received the Hearing Notice and SCN only in March 2022. He reiterated his submissions of 14.03.2022 and sought another 2 months to file his reply.

48. Vide e-mail dated 28.04.2022, Noticee 2 was advised to submit his response on the allegation levelled against him regarding signature of the compliance certificates submitted by the Company in terms of Clause 49 (V) (a) of the Listing Agreement, in the Annual Reports for 2011-12 and 2012-13. The Noticee was also informed that the Annual Reports and compliance certificates were publicly available on the website of the stock exchange and no inputs from the Company were required with reference to his signature of the said compliance certificates. The Noticee was also informed that the Company Educomp Solutions Ltd. was undergoing insolvency proceedings and the powers of its management were suspended under the Insolvency and Bankruptcy Code, 2016. Therefore, further time could not be granted on the basis of expected time required for inputs from the Company. Further, Noticee 2 was informed that he could make further submissions including those regarding seeking further time during the hearing.

49. During the hearing conducted on 09.03.2022, Noticee 1 in-person and her Authorized Representative Dr. Sanjeev Kumar sought two weeks to make detailed written submissions, which request was acceded to.

50. Vide letter dated 23.03.2022, Noticee 1 made the following submissions:-

   a. Noticee 1 has been in the employment of the Company during the period from 04-11-2000 to 25-04-2012. The Experience Certificate dated 26.04.2012 is attached as Annexure-1.

b. Notice 1 joined the company on 04-11-2000 as Manager (Finance) vide Appointment Letter dated 24-10-2000 issued by Educomp Datamatics Limited (which was later changed to Educomp Solutions Limited (ESL).

c. During her association with the Company, Noticee 1's work included assisting the Board and Promoter directors in Finance functions, being an association simplicitor to general accounting, MIS, budgets, need-based Investor meetings, assisting Board and Directors on M&A activities, work allocated by Board and promoter Director on need basis etc. along with a team of around 20-25 people comprising of 6-7 Chartered accountants), (A copy of Appointment letter is attached as Annexure-2**.**

d. In order to meet the requirements of Law, the designation of the Noticee 1 was changed in 2007 as Chief Finance Officer (hereinafter referred to as the "CFO"); however, there was no fundamental change in the functioning of the Noticee 1 as stated above.

e. The above fact is manifest from the Annual Accounts of the Company that the Noticee 1 has never signed any Annual Accounts/ Report namely the Balance Sheet and/or the Profit & Loss Account of company, whatsoever.

f. Noticee 1 was not a Director of the company namely Educomp Solutions Limited ("**ESL**"), so as to have comprehensive knowledge of the operations and other miscellaneous information about the Company.

g. Noticee 1 had resigned from the Company on 06-03-2012 and had been relieved on 25-04-2012. Noticee 1 handed over her charge to the Director and thereafter had no contacts with the company as such.

h. With such background, even on being CFO, Noticee 1 was not deeply involved in the matters of Accounts and other incidentals and she had to act as per instructions of the CMD and the Board. That in the matter of Accounts finalisations, advice and guidance of the Statutory Auditors were taken by the Company. Thus, Noticee 1 also naturally relied on the Auditor's Report. Whenever and whatever, reports or submissions had to be made by the Noticee 1, she relied on the Audited Accounts.

i. With regard to relations of ESL and Edumart Smart Services Private Limited (ESSPL) of holding and subsidiary, it is submitted that the Noticee 1, relying on the Annual Accounts as well as Auditors' Report always believed that there is no such relation of holding and subsidiary between these two companies since Statement under Section 211 of the Companies Act 1956 was never attached with the Annual Accounts and/or the Directors' Report; however, Noticee 1 did not know the intrinsic/ internal position, as she was not involved in such matters whatsoever.

j. Noticee 1 left the Company in April 2012 and has a natural limitation of memory in respect of the subject matter due to vintage of time and hence, Noticee 1 is replying on the basis of recalling memory and/or the information gathered from SCN and its Annexures/ MCA Website/ Company website.

k. Noticee 1 has made efforts to reply and/or to explain the matter as far as the information, which she could gather from SCN and its Annexures as well as the website of ESL and MCA 21 and also as far as she could recall even after the passage of long time.

l. With respect to allegation in SCN that prima facie, a sharp decrease in sales and total revenue seems to be there and ESL have made significant Provisions & Write offs for FY 2013 onwards, Noticee 2 had left the Company in FY 12 only, therefore, she is unable to comment upon this.

m. To the understanding of Noticee 1, in relation to company's provisions/ write off during FY 2013 onwards, since she had already resigned from the Company on $6^{th}$ March 2012 and got relieved on $25^{th}$ April 2012 , she is unable to make any comment upon the same.

n. In reply to Para 26 regarding Mr. Abhinav Dhar, Noticee 1 is able to scantly recall that he was associated with the company looking after Smart Class Sales. Further, she understands from the SCN itself that a company namely ESSPL was incorporated and she believes that incorporation of ESSPL is the personal decision of the Promoters. Further, his directorships in other subsidiaries of Educomp is not in the knowledge of Noticee 1; however, Noticee 1 is unable to comment upon the facts in this regards. Further, as per Audited Annual reports of company for FY 09, FY 10, FY 11 Sh. Abhinav Dhar was not shown as KMP. Regarding Mr. Ashok Mehta Noticee 1 is able to recall that he was also an employee of the company, but perhaps resigned from the company to start his own venture. Further, regarding his appointment again as President in FY 2014-15 is beyond the knowledge of Noticee 1 and she is unable to comment upon the same.

o. All the decisions and various transactions that have happened either within the Company or between company and ESSPL, were duly approved by the Board of Directors, including the Promoter Directors and Noticee 1 had no role to play in that process whatsoever.

p. So far as the "substantial revenue aspect" under Para 30 of the SCN is concerned, Para 4(b) of AS-18 regarding "Related Party Transactions" provides that "two entities can't be considered "related" to each other merely because they have single customer, supplier, franchiser, distributor, or general agent with whom an enterprise transacts a significant volume of business merely by virtue of the resulting economic dependence", With this perspective, the observation needs to be reconsidered.

q. As far as the matter of "issuance of preference shares" is concerned, Noticee 1 understands Section 85(1) of the Act states that preference shares are the shares that carries preference over equity shares in terms of payments of dividend and repayment in case of winding up of a company. Further, Section 87 of the Act states that the preference shares don't carry voting rights except in few exceptional situations. In common business parlance, preference shares are considered as "debt" instead of "capital" as the same has to be redeemed by the issuer. And in ESL-ESSPL case these shares are "redeemable". Therefore, interpretation with regard to control and the related party transactions needs to be relooked into. Anyhow, the Noticee 1 has no role to play and is not responsible for any violation in compliance, which is the duty of the Company Secretary and the Statutory Auditors.

r. As far as the matter of providing "corporate guarantee" is concerned, it seems to be the prerogative of Board of a company related to mutual understanding and business operations. Nowhere in any statute, is it mentioned that if an entity has provided corporate guarantee, it would start controlling the other and thus, would fall under Related Party.

s. Further, with regard to the "establishing of the status of control", as highlighted under Para 34, Noticee 1 finds that it's a matter of interpretation; however, in her interpretation, in terms of section 4 of the Companies Act 1956, there seems no such circumstances in which ESL and ESSPL could have been truly having Holding and Subsidiary relationship. Thus, the transactions carried out under a Business Transfer Agreement, there seems to be only a third party relationship.

Further, Para 5.1 and Para 10 of AS 21 issued by ICAI define "Control" and relationship between ESL and ESSPL, according to which it seems not falling within the definition of control. Also if as per the Act or Accounting Standards (specially, if there would have been any such relationship, the Statutory Auditors would have ensured compliance of Sec 211 of the Companies Act 1956 together with disclosure of consolidated and standalone results, as the Statutory Auditors were obligated under Section 227 to ensure compliance of the provisions of the Act and AS etc. However, otherwise also, the Noticee 1 had no role to play in this connection, nor is she responsible for any interpretation or disclosure.

t. Further, with regard to the finding, as stated in SCN, that, in FY 2013-14, due to CDR, ESL started considering ESSPL as its subsidiary, Noticee 1 is not aware of anything in this respect, as Noticee 1 had left the Company in 2012 and hence, Noticee 1 is not in position to comment upon it.

u. As per the provisions relating to Companies Act 1956, AS-18 and AS-21 etc., there seems no related party/ subsidiary-holding relationship between the Company and ESSPL. Thus, ESSPL was deemed to be considered as "Third Party" not "Related Party". As far as non-compliance of Clause 32 is concerned, though it is the job of Company Secretary and to her understanding, there is no non-Compliance of Clause 32 of listing agreement. Further, Clause 49(IV)(A) of listing agreement read with regulations 103(2) of SEBI (LODR) Regulations were not applicable during FY 12, so Noticee 1 is unable to provide any comment on it.

v. With regard to Para 37 of SCN, Noticee 1 humbly submits that Noticee 1 has not signed any Financial Statements pertaining to any Financial Year during her tenure with ESL. Further, the certificate, as required under clause 49 of Listing agreement was signed by Noticee 1 for FY 2009-10 and FY 2010-11 only (not 2011-12 as stated in Para 37 of Show cause notice) on the basis of the Audited Annual Accounts, believing that the Annual Audited Accounts present a True and Fair view of the Accounts of ESL.

w. SEBI LODR Regulations were not applicable till the time the Noticee 1 left the Company in early March 2012.

51. During the hearing conducted through videoconferencing by WebEx on 29.04.2022, the Noticee-2 reiterated the submissions made vide 14.03.2022 and 28.04.2022, stating that he was interim CFO of Educomp Solutions Ltd. between April 2012 and September 2013. Further, Noticee-2 submitted that he was unaware of any fraud in the Company at the relevant time, and that he believed that what he had certified in the impugned Annual Reports in the SCN was correct. The Noticee also sought further time of at least 2 months to correspond with the Company, which is undergoing insolvency proceedings, as well as another copy of the SCN. It was noted that almost a year had passed since the date of service of SCN upon the Noticee by e-mail as per records, and more than two months had further passed since date of service of hearing notice enclosing the SCN once again upon the Noticee. However, in the interest of natural justice, further time till May 24, 2022 was granted to the Noticee to make his consolidated submissions.

52. Accordingly, hearing was conducted through videoconferencing by WebEx on May 24, 2022 wherein Noticee-2 reiterated his written submissions made vide reply dated May 20, 2022. Noticee-2 sought further time to make additional written submissions and the same was submitted vide email dated May 26, 2022.

53. Noticee-2 made the following submissions vide its reply dated May 20, 2022 and May 26, 2022:

a. The alleged violation pertains to the period 2012-13. The present SCN has been issued on May 14, 2021 (i.e. after more than 8 years from the impugned period of violation). The said inordinate delay has not been explained by SEBI. On this ground alone the SCN proceedings needs to be and ought to be discontinued and SCN needs to be dropped qua me.He had no knowledge or awareness about Educomp and ESSPL being related parties, as alleged.

b. In April 2011, he had joined Educomp in Finance Department and was reporting to the Group CFO viz. Ms Sangeeta Gulati. Subsequently, when Ms Sangeeta Gulati resigned in April 2012 the management had appointed Noticee-2 as Interim CFO in April 2012, since no replacement was immediately available and they were still looking around for a suitable candidate to fill the vacancy of CFO. Under the aforesaid peculiar circumstances, he came to be appointed as CFO of Educomp. He was a mere employee, who was appointed an Interim CFO and not a director holding the position of CFO. He was CFO of Educomp during the period April 2012- December 2013 and was reporting to CMD and Group CEO.

c. Subsequently, due to personal reasons (including non-payment of dues, delayed payment of salaries etc.) he had tendered his resignation in September 2013, which was accepted and he was relieved on December 5, 2013.

d. He never held any shares of Educomp or any of its related entities. Further, he also did not have any investment or any financial stake in Educomp or subsidiaries or its affiliates and was in no manner related to any of the promoters/directors/management of Educomp, save and except as an employee.

e. Prior to Noticee-2 becoming interim CFO (in 2012-13), Educomp and ESSPL were having business relationship since 2009. All along, the relationship between Educomp and ESSPL was disclosed as 'third party relationship'. The nature of relationship between Educomp and ESSPL had remained the same, i.e. it continued as it is, even during Noticee-2's limited tenure as CFO. The said relationship was over the years, already examined and scrutinised by Auditors, Audit Committee and Board of the Company from time to time in the past financial years and at no point of time, any red flags were raised with regard to the relationship between Educomp and ESSPL not being a 'third party relationship'.

f. At the relevant time (2009-10), the Board of Directors of Educomp consisted of very well reputed persons/professionals, including Ms Shyama Chona, Rajieev Kishan Luthra, Gopal Jain etc. In the Annual Report of 2009-10, under the head "Directors Responsibility Statement" following has been specifically stated and disclosed:

*"In pursuance of provisions of Section 217(2AÁ), we hereby confirm that:*

*(i) That in the preparation of the Annual Accounts for the period ended as on 31st March, 2010, the applicable Accounting Standards have been followed and no material departure has been identified.*

*(ii) Accounting Policies have been consistently applied in a reasonable and prudent manner so as to give true and fair view of the state of affairs of the Company for the financial year ending 31st March, 2010 and of the Profit and Loss Account for the financial year ending as on 31st March. 2010.*

*(iii) Proper and sufficient care has been taken for the maintenance of adequate records in accordance with the applicable provisions of the Companies Act, 1956 for safeguarding the assets of the Company and for preventing and detecting fraud and other irregularities.*

*(iv) The Annual Accounts for the Financial Year ended on 31st March 2010 have been prepared on the going concern basis"*

Similar disclosures have also been made in the subsequent financial years-prior to Noticee 2 becoming CFO in April 2011.

g. Auditors of Educomp (during 2012-13 and even prior thereto ,since FY 2009-2010 Haribhakti & Co, Chartered Accountants and Anupam Bansal & Co.) were the Joint Statutory Auditors — who enjoyed formidable reputation in the field of auditing .Therefore, when Noticee-2 became CFO and had certified the financial statement of Educomp (in Annual Report) for FY 2012-13, there was nothing to excite his suspicion that the relationship between Educomp and ESSPL was not 'third party relationship', but both were 'related parties ', as alleged .

h. At the relevant time, genuinely believing that the contents of the financial statements (inter alia disclosing relationship between Educomp and ESSPL as third parties) are above board and not violative of any laws, Noticee-2 had certified the same as CFO (which were also countersigned by the Managing Director-to whom he was reporting). At the relevant time, he did not have any idea that the disclosures were incorrect, as now alleged. Here it may be appreciated that, it is not the case that Educomp had not disclosed entities related to it at all (whether as, group entities, subsidiaries or associates or joint ventures etc.). In fact, the Annual Report of 2012-13, contains detailed list of various entities which were group entities or were subsidiaries or were associates or were joint venture companies etc.

i. With limited awareness/knowledge about the relationship of Educomp and ESSPL, Noticee-2 could not sense any misrepresentation involved at the relevant time in the nature of relationship shared by both the entities. The commercial relationship between Educomp and ESSPL was going on smoothly, as in the past, wherein ESSPL was religiously making payments to Educomp without any default, in terms of the Tripartite Agreement executed between the parties. There was absolutely nothing to excite his suspicion regarding the alleged misrepresentation of the relationship between Educomp and ESSPL per se, which was over the years consistently disclosed by Educomp, as third party relationship.

j. Noticee-2 had certified the financial statements for the FY 2012-13, bonafide believed to the best of his knowledge and belief :(a) that the statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading; & (b) that these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, applicable laws and regulations. Therefore, under the aforesaid circumstances, based on the mere factum of signing the financial statements on behalf of the Company, he cannot be alleged to have violated the provisions of Listing Agreement, ignoring the surrounding circumstances.

k. He was not aware at any point of time that Abhinav Dhar who was the senior employee -director of Educomp was the promoter of ESSPL. There was nothing on record to demonstrate the same. Further, at no point of time Abhinav Dhar had ever disclosed the same, while disclosures were being made in the Annual Reports of Educomp. Knowledge and awareness of Abinav Dhar being promoter of ESSPL (during 2009) cannot be attributed to Noticee-2 automatically. As Abhinav Dhar was not Director/ KMP of Educomp, therefore, no disclosures regarding directorship in other companies were required to be made to the management/ Board, by him. In any event, merely because Abhinav Dhar was director of certain subsidiaries or related companies of Educomp, cannot ipso facto lead to a conclusion that ESSPL was a subsidiary of Educomp.

l. At the relevant time Noticee-2 was not aware that Abhinav Dhar was KMP (as per public issue Prospectus of Educomp which was issued way back in January 10, 2006 whereas he had become CFO only in April 2012). During his tenure as CFO, Abhinav Dhar was not a KMP and was not disclosed as one in the Annual Report of 2012-13.

m. Noticee-2 was not aware that Ashok Mehta, MS and shareholder of ESSPL, was employed in the past by Educomp in September 2013 whereas Noticee-2 had resigned tendered his resignation in September 2013 itself and left the services in December 2013 after serving the notice period. Also he was not aware that Ashok Mehta was KMP (as per public issue of Prospectus of Educomp which was issued way back in January 10, 2006-whereas Noticee-2 became CFO only in April 2012). During the tenure of Noticee-2, Ashok Mehta was not in the employment of Educomp as he joined the services of Educomp only in September 2013.

n. Noticee-2 was not aware that Pramod Thatoi, promoter Director of the ESSPL, was also director in several subsidiaries of Educomp

<u>Subscription of Cumulative Redeemable Non-Convertible Preference of ESSPL</u>

o. Merely because in FY 2009-10, Educomp had subscribed a total 2000000 8% Cumulative Redeemable Non-Convertible Preference shares of face value of Rs. 100 each (worth Rs. 200,000,000/-) of ESSPL and the subsequent subscription in 2010-11, cannot mean that both the parties are related parties. Wherein Noticee-2 became CFO only in April 2012 (i.e. much after the aforesaid subscriptions). Further, he had no role or involvement in the decision making or otherwise, relating to the said subscriptions in 2009-10 or 2010-11.

p. In regard to "employee and employer relationship" as alleged is concerned it may be noted that, based on the same it cannot be held that directors of ESSPL were subject to control of Educomp.

Reliance placed on sec 4(1) (a) of the Companies Act 1956, in this regard, is totally misplaced. Section 4 of the Companies Act, 1956 determines the Holding-Subsidiary company relationship and the two significant factors which determine the relationship are control and ownership. The term "control" as envisaged in Section 4(1) (a) of the Act means that the controlling company should control the composition of the board of directors of the subsidiary. The definition and meaning of "Subsidiary Company" as given under Section 4(1) (a) of the Companies Act, 1956 has been reproduced below for ease of reference:

*"**4. Meaning of "Holding Company" and "Subsidiary"***

*(1) For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), be deemed to be a subsidiary of another if, but only if, -*

*(a) that other controls the composition of its Board of directors ; or*

*(b)……...*

*(c)……...*

*(2) For the purposes of sub-section (1), the composition of company's Board of directors shall be deemed to be controlled by another company if, but only if that other company by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships ; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say —*

*(a)that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid ;*

*(b)that a person's appointment thereto follows necessarily from his appointment as director or manager of or to any other office or employment in, that other company ; or*

*(c)that the directorship is held by an individual nominated by that other company or a subsidiary thereof "*

q. Perusal of section 4(1) read with Section 4(2), will bear out that the test of "Control" is undoubtedly referable to the composition of the Board of Directors by controlling the appointment of Directors thereto and removal therefrom and not otherwise. In other words, the composition of the Board of Directors of a company is deemed to have been controlled, by another company if, but only if, that other company, without the consent or concurrence of any other person or entity, can appoint or remove the holders of all or majority of the directors by virtue of exercise of some power exercisable by it, at its own discretion. Further, sub-clauses (a) to (c) of Section 4(2) should also not be applicable to the entities concerned.

r. In this context, your attention is invited to the following observations of the Hon'ble High Court of Kerala in the matter of M. Velayudhan Vs. Registrar of Companies:

*"10. ... The term "controls the composition of board of directors" is to be read in accordance with and only in accordance with Sub-section (2) of Section 4 of the Act and that Sub-section conceives of control if,' but only if, the Company which claims control can appoint or remove holders of all or a majority of the directorship by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person. ..."*

s. A similar view was expressed by the Division Bench of the Hon'ble Delhi High Court in Oriental Industrial Investment Corporation Vs. Union of India [1981] 51 Comp Cas 487 (Del) after taking into consideration Palmer's Company Law (Vol. I, P. 746, 22nd Edn.) in the following words:

*"(20) .....As regards the control of the composition of the board of directors, requirement as established only if the holding company has the independent power to appoint or remove the holders of all or a majority of the directors and the Act states three circumstances in which the requisite power to appoint is considered to exist [S. 4(2)]..."*

t. In the case of DLF Limited vs. Securities and Exchange Board of India, Appeal No. 33 1 of 2014, the Hon'ble Securities Appellate Tribunal, Mumbai in Para 64 of the judgement decided on March 13, 2015, held that:

*"64. Thus, the mere fact that the Directors on the Board of the three companies who might have been the employees of the Appellant-Company or its wholly owned subsidiaries were not removed by the share-holders of these three erstwhile subsidiaries would not lead to an inference of decisive control over the composition of the Board of such companies by the Appellant-Company."*

u. On a perusal of the relevant law and ratio laid down by courts, as reproduced hereinabove, it is clear that 'control' has to be seen as effective and decisive control which needs to be proved by concrete documentation on record, and not on the basis of conjectures, surmises or creative interpretations of the law. In the matter of DLF Limited, the Hon'ble Securities Appellate Tribunal concluded that by virtue of the fact that Directors of the three companies, sought to be treated as subsidiaries, being former employees of DLF Limited would not lead to an inference of decisive control by DLF over the composition of the Board of Directors of the three companies concerned.

v. Similarly, in the present matter, the mere fact that the Directors on the Board of ESSPL were former employees of Educomp would not lead to an inference that Educomp had decisive control, or any control for that matter, over the composition of the Board of Directors of ESSPL. The Board of Directors of ESSPL could be deemed to be controlled by Educomp if, and only if (as stated in section 4(1) of the Companies Act, 1956), Educomp, at its own discretion, had the power to appoint or remove the whole or majority of the directors of ESSPL. In other words, for "control" to exist, the holding company should not require "consent or concurrence" of any other person with respect to the removal or appointment of directors on the Board of the subsidiary. In light of the aforesaid, it is submitted that Educomp was neither controlling the activities of ESSPL nor the composition of the Board of Directors of ESSPL. Further, there is nothing on record to show that (i) the shareholders of ESSPL could not appoint Directors without the permission and approval of Educomp and/or, (ii) that the shareholders of ESSPL wanted to appoint new Directors for ESSPL and that Educomp prevented them from doing so.

w. Additionally, it may be noted that control of a company, flows from the shareholding (voting rights) of the person. There is no allegation in the Notice that shareholding of ESSPL held by Ashok Mehta & Pramod Thatai was not held by them or that the same was sponsored or financed by Educomp or its promoters/directors, so as to give control of the shareholding of ESSPL to Educomp. In the absence of the same, to still suggest that Educomp was controlling the composition of directors of ESSPL is totally misplaced. In view of the aforesaid, Noticee-2 denied that ESSPL was subsidiary of Educomp, since its incorporation.

x. Further, reliance placed on AS-18 (pertaining to Related Party Disclosures) issued by Institute of Chartered Accountants of India (ICAI), to allege that 'Educomp had the practical ability to control/direct the activities of ESSPL since its incorporation and therefore, ESSPL was a subsidiary of Educomp and all its transactions with ESSPL required to be reported as related party transactions since its incorporation ' is also totally misplaced. The prime objective of AS-18 is to establish requirements for disclosure of related party relationships and transactions between a reporting enterprise and its related parties. However, the scope of AS-18 is limited only to related party relationships as laid down under paragraph 3 thereof.

The same has been reproduced below for ease of reference:

*"3. This Standard deals only with related party relationships described in (a) to (e) below:*

(a) *enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise (this includes holding companies, subsidiaries and fellow subsidiaries);*

(b) *associates and joint ventures of the reporting enterprise and the investing party or venturer in respect of which the reporting enterprise is an associate or joint venture;*

(c) *individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual;*

(d) *key management personnel and relatives of such personnel; and*

(e) *enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a member of key management in common with the reporting enterprise."*

y. The requirement laid down in point (a) para 3 of AS-18 deals with the "control" exercised by one entity over another. During Noticee-2's period of employment as CFO of Educomp, neither Educomp had any control over the composition of the Board of Directors of ESSPL nor did Educomp have any general control of the business policies of ESSPL.

z. In so far as point (b) and (c) of para 3 of AS-18 are concerned, it is submitted that the same are not applicable to the fact-situation of the present matter. Further, with reference to points (d) and (e) of para 3 of AS-18, it may be noted that the same are not attracted because firstly, they are applicable to enterprises owned by directors or major shareholders of the reporting enterprise. In the instant case, ESSPL was neither owned by any of the Directors of Educomp nor did the majority shareholders of Educomp have any role to play in the financial and operational policies of ESSPL. Secondly, Educomp and ESSPL never had any KMP or director in common. Therefore, Educomp and ESSPL cannot be considered as 'Related Parties'.

aa. It is pertinent to mention that AS 18 under paragraph 4 provides certain criteria where the entities shall be deemed not to be related parties. The same are as under:

*"4. In the context of this Standard, the following are deemed not to be related parties:*

(a) *two companies simply because they have a director in common, notwithstanding paragraph 3(d) or (e) above (unless the director is able to affect the policies of both companies in their mutual dealings);*

(b) *a single customer, supplier, franchiser, distributor, or general agent with whom an enterprise transacts a significant volume of business merely by virtue of the resulting economic dependence; and*

(c) *the parties listed below, in the course of their normal dealings with an enterprise by virtue only of those dealings (although they may circumscribe the freedom of action of the enterprise or participate in its decision-making process):*

(i) *providers of finance;*

(ii) *trade unions;*

(iii) *public utilities;*

(iv) *government departments and government agencies including government sponsored bodies. ".*

bb. It is thus evident that the above provisions of AS-18 (para 4) carve out exceptions to the concept of "Related Parties" as mentioned therein. Para 4 states that certain entities shall not be deemed to be related parties simply because the two companies have a common Director. It further lays down that a single customer, supplier, franchiser, distributor cannot be considered as a related party to a company merely on the ground that a company is getting significant volume of revenue from that single customer supplier, franchiser, distributor and is economically dependent upon it.

cc. It is reiterated that two parties can be said to be related parties, if one party has the ability to control the other party in making financial and/or operating decisions. Firstly, in view of the definition of "Control" as provided under AS-18, Educomp had no voting rights in ESSPL as it was merely a preference shareholder of ESSPL. Secondly, neither Educomp was in a position to influence the management decisions of ESSPL nor Educomp had the power to direct the financial and/or operational policies of ESSPL, as per any agreement between Educomp and ESSPL. Therefore, Educomp and ESSPL cannot be construed as related parties, as alleged.

dd. With regard to observations in Para 31 of the SCN, it was submitted that in the contents of CDR nowhere it is stated that in the CDR that- Educomp was mandated to declare ESSPL as a subsidiary by the Banks. Said observation lacks any factual basis and is contrary to record. In any event, at the relevant time, Noticee-2 was not aware that Educomp was also mandated to declare ESSPL as a subsidiary in the CDR by the Banks. It may be noted that CDR was approved on February 28, 2014 and Master Restructuring Agreement was signed on March 26, 2014, i.e. much after the date of Noticee 2's resignation (in December 2013). Further, he was not aware that in FY 2013-14, Educomp declared ESSPL as a subsidiary (even when there was no change in its equity shareholding). Same was clearly, not during his tenure as a CFO. Based on the events, which have taken place subsequent to his resignation, in which he was not involved or concerned with or aware about or had any role to play in, no adverse inferences can be drawn against.

ee. With regard to observations in Paras 32 of the SCN, it was submitted that the observations in the para are matter of record. It was reiterated that at the relevant time (i.e. during his tenure as CFO) the relationship between Educomp and ESSPL was commercial in nature and transactions between them were carried out in the ordinary course of business and were on arm's length basis.

ff. With regard to observations in Paras 33 of the SCN. It was denied that the transactions referred to in para between Educomp and ESSPL (during Noticee 2’s period as CFO), were transactions with subsidiary.

gg. With regard to observations in Paras 34 of the SCN, it was denied that Educomp was parent company of ESSPL. Therefore, there was no need to consolidate the accounts of ESSPL with Educomp in terms of AS 21.

hh. With regard to observations in Paras 35 of the SCN, it was denied that ESSPL was controlled by Educomp since incorporation of ESSPL or that ESSPL was a subsidiary of Educomp or that the transactions undertaken between these two companies which were reported as third party transaction are in reality related party transactions. It was denied that the transactions between Educomp and ESSPL were required to be disclosed in its Annual Reports as per Clause-32 of listing agreement. It was further denied that there was any misrepresentation of the accounts/ financials statement by Educomp or that the financial statements were not true and fair.

ii. With regard to observations in Paras 36 to 38 of the SCN, it was denied that there has been any non-disclosure of related party transactions during Noticee-2’s tenure as CFO (FY2012-13) or that he violated the provisions of Clause 49 (V) (a) of listing agreement of Equity Listing Agreement r/w regulation 103 (2) of SEBI (LODR) Regulations, 2015.

jj. He was not aware that Educomp was controlling the ESSPL or that its directors were subject to the control of Educomp due to their "employee and employer relationship" or that Educomp was in position to influence the management decision of ESSPL. Further, Noticee 2 was not aware that the Promoters /Board of directors were not acting honestly or fairly by not making correct disclosure regarding the relationship between Educomp and ESSPL. He had placed bonafide reliance on the integrity of the various disclosures made in the past by the Directors in the Annual Reports and also the certifications in the past made by the auditors, inter alia regarding the relationship between Educomp and ESSPL. Here, it may be appreciated that placing such reliance on other officials viz. directors (i.e. Managing Director-who had also counter-signed the impugned certificate signed by me) is not something which is unusual. The business of life could not go on if people could not trust those who are put into a position of trust for the express purpose of attending to details of management. The Promoters and Managing Director/other directors of Educomp enjoyed a formidable reputation and there was nothing adverse against them or the Company, in public domain. In the absence of any suspicion with regard to their integrity, skill and competence, he was entitled to rely upon their judgment, information and advice. He cannot be faulted for, inter alia, placing bonafide reliance on the disclosures made by them in the Annual Reports in the past -i.e. prior to his becoming CFO, with regard to relationship between Educomp and ESSPL, being third party relationship.

kk. As on March 31, 2010, Educomp was holding 20,00,000 8% Cumulative Redeemable Non-Convertible Preference Shares. This investment of Educomp in the 8% Cumulative Redeemable Non-Convertible Preference Shares was increased to 45,00,000 shares on August 24, 2010. It may be noted that Educomp was merely a preference shareholder of ESSPL. Unlike equity shareholders, preference shareholders are not entitled to voting rights and hence do not possess the power to control or influence company decisions.

Moreover, at the relevant time, decision was taken by ESSPL to allot Redeemable Non-Convertible Preference Shares instead of Optionally Convertible Preference Shares, perhaps with the intention that Educomp would never own a substantial portion of the equity shareholding or voting rights of ESSPL according to the Companies Act as it stood in 2010.

ll. on January 04, 2014, Educomp Asia Pacific Pte Ltd., a wholly owned subsidiary of Educomp, subscribed to 54,70,929 5% Cumulative Compulsory Convertible Preference Shares of Rs. 10/- each fully paid up of ESSPL.

mm. It may be noted that in the year 2014, the erstwhile Companies Act 1956 was replaced by the Companies Act 2013 w.e.f April 1, 2014. With the introduction of the Companies Act, 2013, the legal criterion to determine Holding-Subsidiary relationship underwent a change which legally obligated Educomp to disclose ESSPL as its subsidiary as per the amended law. As per Section 2(87)(ii) of the Companies Act, 2013, a company would be a subsidiary of another if the latter (meaning the holding company) exercises or controls more than one-half of the total share capital either on its own or together with one or more of its subsidiaries. Further, as per the then existing Rule 2(r) of the Companies (Specification of definitions details) Rules, 2014, the "total share capital" meant the aggregate of the paid up equity capital along with the convertible preference capital.

nn. Significantly, at the relevant time i.e. in 2009 till March 2014, the requirement was that the holding company should hold "more than half in nominal value of its equity share capital". Relevant part of Section 4 of Companies Act 1956 , pertaining to meaning of holding company and subsidiary company is extracted herein below:

*"<u>Section 4 of Companies Act 1956</u>*

*4. Meaning of" holding company" and" subsidiary".*

*(1) For the purposes of this Act, a company shall, subject to the provisions of sub- section (3), be deemed to be a subsidiary of another if, but only if,--*

*(a) that other controls the composition of its Board of directors; or*

*(b) that other-*

*(i) ……..*

*(ii )where the first- mentioned company is any other company,* ***holds more than half in nominal value of its equity share capital****; or ……."*

There was no need of aggregation of 'paid up equity capital along with the convertible preference capital' for the purposes of reckoning "total share capital". Same came into effect only from April 1, 2014. It may be noted that from 2009 to 2014 Educomp only holds redeemable Non-convertible preference shares in ESSPL (these shares were not even convertible preference shares and is only redeemable).

Consequent to aforesaid changes in statutory regime governing the legal criterion to determine Holding-Subsidiary relationship in the provisions of Companies Act 2013, wherein , after the enforcement of the Companies Act 2013, the total share capital was construed as being inclusive of both paid up equity capital and the convertible preference capital owned by the holding company either on its own or along with a subsidiary, the Company had duly disclosed ESSPL, as a subsidiary in financial statements of FY 2014-15.

oo. Thus, it was only by virtue of the investment made by Educomp Asia Pacific Pte Ltd. and the change in the definition of "Subsidiary Company" under the Companies Act, 2013 w.e.f. April 1, 2014 that ESSPL was declared as a subsidiary of Educomp as mandated by law, and not for any other reason.

pp. In this context your attention is also invited to the following disclosures made in this regard in the Annual Report 2014-15 of Educomp:

***At Para 61, Page no 218 of Annual Report 2014-15 of Educomp following has been disclosed:***

*"Para 61. One Company falls under the definition of "subsidiary" as per the Companies Act, 2013 by virtue of the subsidiary's investment in the convertible preference shares of that Company"*

***At Page 38 (Sl. No. 48 in the Table- Edusmart Services Private Limited) of Annual Report 2014-15 of Educomp following has been disclosed:***

***One of the Subsidiary of Educomp Solutions Limited holds 5% Cumulative Compulsorily Convertible Preference Shares in Edu Smart Services Private Limited. Therefore, M/s Edu Smart Services Private Limited is considered as the Subsidiary of Educomp Solutions Limited and the extent of holding is 99.82% of Total of Equity & Convertible Preference Shares of Edu Smart Services Private Limited.*

qq. The insinuation in the Show Cause Notice, that in the FY 2013-14 the Company made declaration regarding ESSPL as subsidiary even when there was no change in its equity shareholding (Refer Para 31 of Show Cause Notice), misses the aforesaid facts that the declaration was necessitated by change in statutory framework and was not acknowledgement of past non-disclosures or incorrect disclosures, regarding relationship with ESSPL.

rr. Therefore, based on disclosure of ESSPL as subsidiary of Educomp, under the aforesaid circumstances in the year 2014 (i.e. much after Noticee-2's resignation from the Company in 2013), it cannot be insinuated that during 2009 to 2013, ESSPL was subsidiary of Educomp.

ss. Most of the factors relied upon in the Notice for holding that Educomp was controlling board composition of ESSPL, are based on events which either occurred much prior to Noticee-2's appointment as CFO or occurred post his resignation as CFO and thus cannot be relied for the purpose of drawing adverse inferences. For instance:

I. "Shri Abhinav Dhar and Shri Ashok Mehta were KMP (as per public issue Prospectus of Educomp) of Educomp and have been reporting to Shri Shantanu Prakash". (Refer Para 26 of the Notice)- Pubic issue came in the year 2006. Same is a historical fact .But, undisputed position is that, prior to his appointment as CFO in April 2012, in none of the Annual Reports during FY2009 to 20013, either Abhinav Dhar or Ashok Mehta were disclosed as KMP. Allotment of redeemable preference shares by ESSPL in favour of Educomp in the FY 2009-10 & 2010-11 (as referred to in the Notice at Paras 29 & 33) were made much prior to his appointment as Interim CFO in April 2012.

II. "It is seen that Educomp was also mandated to declare ESSPL as a subsidiary in the CDR (Annexure 5) by the Banks." (Refer Para 31 of the Notice)- This happened post his resignation, about which he is not aware. Admittedly, CDR Scheme was approved on 28.2.14 and the Master Structuring Agreement was executed on 26.3.14.

III. "Subsequently, Educomp in FY 2013-14, declared ESSPL as a subsidiary even when there was no change in its equity shareholding". (Refer Para 31 of the Notice) This happened post his resignation.

54. Accordingly, in the light of the allegations contained in the SCNs, the submissions of the Noticees in respect of the allegations made in the SCNs and relevant material available on record, I hereby proceed to decide the case on merits.

## CONSIDERATION OF ISSUES AND FINDINGS

55. The issues arising for consideration in the instant proceedings are:-

    I. Whether the Noticees violated Clause 49 (v)(a) of the Listing Agreement read with Regulation 103 (2) of the LODR Regulations?

    II. If yes, whether the Noticees are liable for imposition of monetary penalty under Section 23H of the SCRA?

    III. If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 23J of the SCRA read with Rule 5 (2) of the SCRA Adjudication Rules?

### I. Whether the Noticees violated Clause 49 (V)(a) of the Listing Agreement read with Regulation 103 (2) of the LODR Regulations?

56. The allegation in respect of Noticees 1 and 2 is that as CFOs of Educomp between 2009-2012 and 2013-2014 respectively, they signed compliance certificates in terms of Clause 49 (V) (a) of the Listing Agreement, certifying that they had reviewed the financial statements of Educomp for the said period and that to the best of their knowledge the statements did not contain any materially untrue or misleading statements and presented a true and fair view of the company's affairs in accordance with applicable Accounting Standards. It is alleged that the said compliance certificates were incorrect, as in the Annual Reports of FY 2009-10, 2010-11, 2011-12 and 2012-13, Educomp allegedly wrongly disclosed various transactions involving its subsidiary ESSPL as third party transactions instead of related party transactions, and also did not disclose that ESSPL was its subsidiary, thus failing to comply with AS- 18 on Related Party Transactions and AS- 21 on Consolidated Financial Statements of Holding and Subsidiary companies.

57. As per AS-18, for transactions between related parties during existence of a related party relationship, reporting enterprise should disclose name of transacting related party, description of relationship and description of nature of

transactions. Further, as per clause 10.1 of AS 18, parties are considered to be related if one party has the ability to control the other party or exercise significant influence over the other party in making financial or operating decisions. Further, a subsidiary is a company in which a holding company controls composition of its board of directors. Clause 32 requires listed companies to prepare consolidated financial statements. AS-21 requires that a parent company which presents consolidated financial statements should consolidate all subsidiaries' accounts.

58. For the purpose of the instant SCN it needs to be determined whether Noticee 1 and Noticee 2 wrongly certified that they had reviewed the financial statements of Educomp for the said period and that to the best of their knowledge the statements did not contain materially untrue or misleading statements and presented a true and fair view of the company's affairs in accordance with applicable Accounting Standards. In order to determine that the certification by the Noticees was incorrect, it needs to be established that they had access to information to enable to them to conclude otherwise.

59. Material on record has brought out that Educomp ESSPL was incorporated on July 02, 2009 and promoted by 2 senior employees of Educomp, Shri Abhinav Dhar, director of Business & Operation, and Shri Ashok Mehta who was director in other related companies/subsidiaries of Educomp at the relevant time. Shri Abhinav Dhar and Shri Ashok Mehta were also KMP (as per public issue Prospectus of Educomp) of Educomp and were reporting to Shri Shantanu Prakash, CMD of Educomp. Further, Shri Pramod Thatoi, promoter Director of ESSPL was also director in several subsidiaries of Educomp. Thus the 2 promoter directors of ESSPL were (i) Ashok Mehta, senior employee of Educomp and (ii) Pramod Thatoi, director of Educomp subsidiaries, holding 50% equity shareholding of ESSPL each from 2010-11 onwards.

60. Further, SCN states that Educomp was mandated to declare ESSPL as a subsidiary in the CDR by the Banks. Subsequently, Educomp in FY 2013-14, declared ESSPL as a subsidiary even when there was no change in its equity shareholding. Thus, it is alleged that Educomp exercised control over ESSPL by

controlling composition of its directors and was hence a subsidiary and related party in terms of AS 18 from the time of its incorporation.

61. It is further, alleged that ESSPL being a subsidiary by virtue of Educomp having control over ESSPL and having been declared a subsidiary in 2013-14, Educomp was required to prepare consolidated financial statements, which it did not do.

62. Clause 49 (V) (a) of Listing Agreement states as follows:

*"49. CORPORATE GOVERNANCE*

*The company agrees to comply with the following provisions:*

*v. CEO/CFO certification*

*The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole-time Finance Director or any other person heading the finance function discharging that function shall certify to the Board that:*

*(a) They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:*

*(i) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;*

*(ii) these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, applicable laws and regulations."*

LODR Regulations

*"Repeal and Savings*

*103.(1) On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.*

*(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in*

*sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations*.*"*

63. On perusal of the relevant portions of the Annual Reports for 2009-13 and the CEO and CFO certificates appended as Annexures to the Annual Reports in terms of Clause 49 (V) (a) of the Listing Agreement as available on the website of BSE and NSE, the following is noted –

    a. In the Annual Report of 2009-10, ESSPL was not disclosed as a related party or subsidiary of Educomp in the Annual Returns, and its accounts as subsidiary of Educomp were not consolidated with that of Educomp. The names of CEO Shantanu Prakash and CFO Sangeeta Gulati appear at the end of the compliance certificate dated 17.08.2010 in compliance with Clause 49 (V) (a) of the Listing Agreement by the Company.

    b. In the Annual Report of 2010-2011, in Schedule 7 of the Standalone Financial Statements of Educomp, investment in 45,00,000 8% Cumulative Redeemable Non-convertible Preference Shares is disclosed as "Investment –other", and is not mentioned as Investment in Subsidiary or Associate of Educomp. Further, the names of CEO Shantanu Prakash and CFO Sangeeta Gulati appear at the end of the compliance certificate dated 30.05.2011 (Annexure A to the Annual Report) in compliance with Clause 49 (V) (a) of the Listing Agreement by the Company. Sangeeta Gulati's name also appears in Annexure B to the Director's Report as Senior Management Personnel.

    c. In the Annual Report of 2011-12, as in the case of the previous Annual Return, investments in preference shares of ESSPL were mentioned as investments in "Others" and not as investments in Associates or Subsidiaries. Further, the name of Sangeeta Gulati (Noticee 1) is mentioned in the Annexure to Director's Report as CFO with qualifications C.A., M.Com. B.Sc. (Zoology) who joined Educomp on 04.11.2000 and resigned after 31.03.2012. Noticees 1 and 2 are both mentioned in the Annexure B to the Director's Report as Senior Management Personnel of Educomp. The names of CEO Shantanu Prakash and CFO Ashish Gupta (Noticee 2) appear at the end of the compliance certificate dated 30.05.2012 (Annexure A to the Annual Report) in compliance with Clause 49 (V) (a) of the Listing Agreement by the Company.

d. In the Annual Report of 2012-13, Noticee-2's name, along with that of CEO Shantanu Prakash and 2 others, appears as CFO along with his signature on the format of covering letter of annual audit report to be filed with the stock exchanges as per clause 31 (a) of the Listing Agreement, dated 13.08.2013. Further, The names of CEO Shantanu Prakash and CFO Ashish Gupta (Noticee-2) appear at the end of the compliance certificate dated 30.05.2013 (Annexure A to the Annual Report) in compliance with Clause 49 (V) (a) of the Listing Agreement by the Company.

64. The material on record, as stated above shows that Noticee 1 and 2 certified that financial statements, to the best of their knowledge and belief, are in compliance with existing accounting standards, applicable laws and regulations.

65. I note from the material on record that Noticee 1 was CFO of Educomp for FY 2009-10 and 2010-11, and during FY 2011-12 up to 31.03.2012(when she resigned). Noticee 1 has contended that she was not aware that ESSPL was a subsidiary or was controlled by Educomp. Noticee 1 has argued that cumulative redeemable preference shares were in the nature of debt and not equity. She has further stated that as per clause 49, all the disclosures requirements including related Parties disclosures / third party disclosures etc., were to be duly approved by the Audit Committee and the Board while approving & adopting Financials pertaining to a Particular Financial year. Needless to say that being a listed Company at that time, process is deemed to have been followed and Audit

Committee and Board must have duly looked upon & approved those Related Party / Third Party transactions.

66. Noticee-2 has contended that his tenure as a CFO was only for a limited tenure (from April 2012 to December 2013) and most of the factors relied upon in the SCN for holding that Educomp was controlling the board composition of ESSPL, are events which either occurred prior to his appointment as CFO or occurred post his recognition. Further that, he in good faith had relied upon the previous disclosures made by the company and various auditors with respect to the relationship between Educomp and ESSPL. That pursuant to the issue of preference shares by ESSPL to Educomp, the company was never recognized as related party and thus he had no reason to warrant re-examination of the relationship between the two companies, which was already certified by Statutory Auditors over the years. Moreover, the Noticee contended that during his tenure as CFO, Educomp was required to comply with Companies Act, 1956 wherein the requirements of a holding-subsidiary relationship was different from the requirements given under Companies Act 2013. Based on the Companies Act 1956, Educomp was not required to disclose ESSPL as a subsidiary. It was only after Companies Act 2013 came into force that ESSPL fell within the definition of subsidiary and accordingly the same was disclosed by Educomp.

67. In this regard I note that Noticee-2 was appointed as CFO only as an interim CFO and served for a limited tenure (for April 2012 to December 2013) as a CFO. I accept the contention of Noticee 2 that Mr. Abhinav Dhar and Mr Ashok Mehta were KMP of Educomp as per the prospectus of Educomp issued in 2006, but both of them were not disclosed as KMP in any of the Annual reports of the company from FY 2009 to FY 2013. Moreover, the allotment of preference shares of ESSPL to Educomp were made in the FY 2009-10 and 2010-11 which is much prior to the appointment of Noticee-2 as CFO. I note that, pursuant to the issuance of the preference shares, and until the appointment of Noticee-2 as CFO, in all the financial years, none of the statutory auditors, internal auditors,

director's responsibility reports or annual reports have disclosed ESSPL as a related party or subsidiary of Educomp.

68. I note that during his tenure as CFO and even prior, Educomp only held non-convertible preference shares of ESSPL and it was only on January 04, 2014 (after his resignation i.e. post September, 2013) that Educomp Asia Pacific Pvt. Ltd. (A wholly owned subsidiary of Educomp) subscribed to 5470929 5% cumulative compulsorily convertible preference shares of face value of Rs. 10 each of ESSPL.

69. In this regard, I find it pertinent to refer to the relevant provisions of Companies Act 1956, namely, section 2(47) read with section 4 of the Companies Act, 1956, which reads as under:

> ***2. DEFINITIONS:***
> ***(47)*** *"subsidiary company" or "subsidiary" means a subsidiary company within the meaning of* ***section 4****.*
>
> ***4. MEANING OF "HOLDING COMPANY" AND "SUBSIDIARY"***
> *(1) For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), be deemed to be a subsidiary of another if, but only if, -*
>
> *(a)* ***that other controls the composition of its Board of directors*** *; or*
> *(b) that other –*
> *(i) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company ;*
> *(ii) where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital ; or*
> *(c)the first-mentioned company is a subsidiary of any company which is that other's subsidiary*
>
> *(2) For the purposes of sub-section (1), the composition of a company's Board of directors shall be deemed to be controlled by another company if, but* ***only if, that other company by the exercise of some power exercisable by it at its discretion without the consent or concurrence of***

***any other person, can appoint or remove the holders of all or a majority of the directorships*** *; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say –*

*(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid ;*

*(b) that a person's appointment thereto follows necessarily from his appointment as director 1 [***] or manager of, or to any other office or employment in, that other company ; or*

*(c) that the directorship is held by an individual nominated by that other company or a subsidiary thereof.*

70. From the above I note that for the purpose of determining holding-subsidiary relationship between Educomp and ESSPL on account of shareholding, Noticees were required to evaluate the same without including non-convertible preference shares in terms of the aforesaid provisions of Section 4(1)(b)(ii). Similarly, for the purpose of determining control of composition of board of directors, Noticees were required to evaluate the same in terms of provisions of Section 4(2) of Companies Act, 1956.

71. I also take note of Noticee 2's submission that Para 4 of AS-18 states that certain entities shall not be deemed to be related parties simply because the two companies have a common Director. It further lays down that a single customer, supplier, franchiser, distributor cannot be considered as a related party to a company merely on the ground that a company is getting significant volume of revenue from that single customer supplier, franchiser, distributor and is economically dependent upon it. Two parties can be said to be related parties, if one party has the ability to control the other party in making financial and/or operating decisions. I also take note of the case laws cited by Noticee 2 in this regard.

72. Without going into the fact that Educomp has substantial control over ESSPL through holding of non-convertible preference shares, and that it also may have exercised control through the promoters of ESSPL who were employees of Educomp at various points of time, for the purpose of instant proceedings, it is

sufficient to determine whether Noticees 1 and 2 had reason to determine existence of such relationship based on information and material available with them and upon applying the provisions of Companies Act as reproduced above. As brought out by Noticee 2, based on nominal equity shareholding as per Section 4(1)(b)(ii), ESSPL was not a subsidiary of Educomp. This has also been stated by Noticee 1. Further, based on the test of *power to appoint to a directorship* as per Section 4(2) also, Noticees had no reason to conclude that Educomp was controlling composition of Board of Directors of ESSPL.

73. In light of the above, I accept the contentions of the Noticee-2 that there was no reason for him to question the previous disclosures and certification and not accept the same as true and correct. I also accept the contention of Noticee 1 that she relied upon the advice and guidance of Statutory Auditors. Thus, Noticee 1 and 2 did not have reason to suspect the disclosures of related parties, or the absence of a related party disclosure between Educomp and ESSPL. Hence, I am of the view that material on record does not establish that Noticees 1 and 2 wrongly certified that they had reviewed the financial statements of Educomp for the said period and, that to the best of their knowledge the certifications, presented a true and fair view of the company's affairs in accordance with applicable Accounting Standards and did not contain materially untrue or misleading statements.

74. Therefore, the allegation of violation of Clause 49 (v)(a) of the Listing Agreement read with Regulation 103 (2) of the LODR Regulations by the Noticees 1 and 2 is not established.

75. As the alleged violations by the Noticees are not established, Issues II and III do not merit consideration.

**ORDER**

76. In the light of the findings noted hereinabove, the adjudication proceedings initiated against the Noticees 1 and 2 vide SCN dated May 14, 2021 are disposed of.

77. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

**DATE: MAY 31 , 2022** **MANINDER CHEEMA**

**PLACE: MUMBAI** **ADJUDICATING OFFICER**