

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER

UNDER

SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES

BY ADJUDICATING OFFICER) RULES, 1995

READ WITH

SECTION 15H(ii) OF SEBI ACT 1992

AGAINST

- 1. MRS. RAMA SINHA**
- 2. MR. SANJAY SINHA**
- 3. PARSHAD & CO**
- 4. SARAN INVESTMENTS**
- 5. EIDER FINANCIAL SERVICES LTD.**
- 6. CENTRE FOR EXCELLENCE IN FASHION TECHNOLOGY**
- 7. EIDER E-COMMERCE LTD.**
- 8. EIDER ELECTRONICS INDUSTRIES LTD.**
- 9. SKYTEL COMMUNICATIONS LTD.**
- 10. MATA NAINA DEVI SPINNING MILLS LTD.**

FOR THE VIOLATION OF REGULATION 11(2) OF SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997 IN THE MATTER OF ACQUISITION OF SHARES OF EIDER INFOTECH LTD.

I was appointed as Adjudicating Officer by SEBI vide order dated 14th November 2003 to inquire into and adjudge under Section 15H(ii) of the SEBI Act, 1992 the alleged violation of Regulation 11(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 in the matter of acquisition of shares of M/s Eider Infotech Ltd. (hereinafter referred to as the target company or EIL) by entities 1-10 (hereinafter referred to as the acquirers and persons acting in concert or noticees) without making public announcement as per the said regulations.

NOTICE

Accordingly show cause notice dated 29th March 2003 was issued to the noticees, which alleges the following:

The promoters of EIL (noticees 1, 2 & 9) and their associated entities (noticees 5, 8 & 10) held 84.51% of EIL's equity capital as on 30.09.99 as detailed below:

Share Holder	Relationship	Shares of EIL	%
Rama Sinha (noticee 1)	Promoter of EIL	1,318,710	6.60%
Sinha Sanjay (noticee 2)	--do--	455,420	2.28%
Eider Financial Services Ltd. (noticee 5)	Promoted by Rama and Sanjay Sinha. Company under same management as that of EIL – 370(1B) of Companies Act. Noticee 2 is the cheque signing authority. Same address as of EIL.	11,587,969	57.97%
Eider Electronics Industries Ltd (noticee 8)	--do--	1,278,500	6.40%
Skytel Communication Ltd (noticee 9)	Promoter group company of EIL.	1,752,210	8.77%
Mata Naina Devi Spinning Mills Ltd (noticee 10)	Promoted by Rama and Sanjay Sinha. Company under the same management – 370(1B) of Companies Act, 1956.	500,000	2.50%
TOTAL		16,892,809	84.51%
EIL's equity		19,990,000	100.00%

Prashad & Co (noticee 3), Saran investments (noticee 4), Centre for Excellence in Fashion Technology (noticee 6) and Eider e-commerce (noticee 7) are alleged to be persons acting in concert (PACs) in the matter of acquisition of shares of EIL as follows;

PAC	Shares acquired	Period	Remark
Prashad & Co (noticee 3)	2,400 5,900 600	16-22.02.00 23-29.02.00 01-07.03.00	thru Tandon Financial Services Ltd. sub Broker to Integrated Master Securities Ltd. (NSE)
Saran investments (noticee 4)	5,000	01-21.03.00	thru Profin Capital Services Ltd. (NSE)
Centre for Excellence in Fashion Technology (noticee 6)	Funded the purchase of EIL shares by Prashad & Co, along with noticee 5		
Eider e-commerce (noticee 7)	Funded the purchase of EIL shares by Saran investments, along with noticee 5		
Total	13,900		

Since promoters of EIL and associates already held more than 75% of its equity, they are prohibited from acquiring further shares of EIL without making public announcement to acquire further shares, in accordance with Regulation 11(2) of SEBI (SAST) Regulations, 1997. It is alleged that no public announcement was ever made before the aforesaid acquisition of shares in terms of the Regulation cited.

The notice also detailed the alleged link between the promoters of EIL and the PACs. It also details the mode of funding the PACs in the aforesaid acquisition, by the promoters of EIL and their associate entities.

REPLY AND HEARING:

The notice sent by Registered post with AD to Eider E Commerce (noticee No.7) alone could be served. The rest of the nine notices sent by registered post acknowledgement due to the last known address were returned undelivered.

Vide letter dated 09.06.04, sent by Registered Post acknowledgement due to Eider E Commerce Ltd, the company was advised to attend the Adjudication proceedings on 18.6.2004. The letter was also sent by Fax on the same day. Eider E Commerce (Noticee No. 7) vide its letter dated 15.06.04, informed that its earlier reply dated 09.09.2003 to SEBI (Investigating Officer) may be taken on record. Copy of the Order appointing the Adjudicating Officer dated 14.11.2003 was sought which was earlier sent vide AO's letter dated 9.6.2004. However, the company failed to attend the Adjudicating proceedings on 18.6.2004.

Another opportunity of personal hearing was granted to Eider E Commerce Ltd. on 7.7.2004 vide letter dated 24.6.2004 sent by Registered Post with AD. In the said notice, it was forewarned that if the company fails to attend the proceedings on the said date, the same would be held ex parte. Acknowledgement was received from the postal authorities, for the delivery of the said letter, but again Eider E Commerce failed to attend the Adjudication proceedings on 7.7.2004.

Notwithstanding that the company did not attend the personal hearing on two previous occasions i.e. on 18.6.2004 and 7.7.2004, yet another opportunity of personal hearing was granted to Eider E Commerce Ltd. vide letter dated 15.7.2004 advising the company to attend the personal hearing on 16.8.2004. The said letter was also sent by Registered Post AD. Again, it was forewarned in the said letter that if the company fails to avail the opportunity, the proceedings would be held ex-parte. The company yet again failed to appear for the personal hearing and did not avail the opportunity of personal hearing.

Since the showcause notice dated 29.3.2004 to noticees other than Eider E Commerce Ltd. sent by Registered Post AD were returned undelivered, copies of these showcause notices were sent to the Company Secretary of Eider Infotech Ltd vide letter dated 15.7.2004 sent by Registered Post AD. In the communication enclosed to these notices dated 15.7.2004, the noticees were informed to submit their reply to the show cause notice latest by 3.8.2004 and also avail opportunity of personal hearing on 16.8.2004. It can be seen that most of these noticees are promoters of the target company or its associate or persons acting in concert. But the target company vide its letter dated 6.8.2004 has returned the said letters citing unsatisfactory reasons such as the promoter's / noticees like Mata Naina Devi, Spinning Mills Ltd., Skytel Communications Ltd, Eider Electronics Industries Ltd are separate legal entities etc. and therefore they cannot serve them the notices.

Thus it may be seen that although fair and reasonable opportunity was afforded to the noticees, they failed to avail the same. Therefore, the matter is disposed off as per the material on record.

Eider E-Commerce (Noticee 7) replied vide letter dated 28.6.04. It was contended that Noticees 9 &10 cannot be called as associates just because they share common address with it. It was submitted that 1,752,210 and 50,000 shares of EIL belonging to Noticees 9 &10 respectively, were transferred in the month of October, 1999. Therefore, it was contended that the holding of the

promoters of EIL and their associates worked out to only 73.24% of EIL's equity as on 31.10.99 as under:

Share Holder	Shares of EIL	% of Holding
Sinha Rama (noticee 1)	1,318,710	6.60
Eider Financial Serv Ltd. (noticee 5)	11,587,969	57.96
Limited Electronics (Eider Electronics/Eider Technologies)(noticee 8)	1,278,500	6.40
Sinha Sanjay (noticee 2)	455,420	2.28
TOTAL	14,640,599	73.24

Eider E Commerce Ltd. denied having purchased EIL shares in the said period and also denied that Noticees 3 & 4 are acting in concert just because of their common address. It was further submitted that even otherwise, if the 13,900 shares purchased by Noticees 3 & 4 are included, the shareholding of promoters of EIL and their associates would still work out to only 73.30% and therefore the provisions of Regulation 11(2) of SEBI (SAST) Regulations, 1997 are not triggered.

Eider-e-Commerce Ltd (Noticee 7) submitted that an authorized signatory cannot be termed as owner of that entity and stated that N.K. Jain, the alleged contact persons of Parsad & Co and Saran Investments (Noticee 3 & 4), is not a key person as defined in Accounting Standards 18. Further, it was stated that though N.K. Jain was an employee of Eider-e-Commerce Ltd (Noticee 7), he was not holding the position of Director during the period Dec-99 to Aug-2000. Referring to funding of share purchases of Parshad & Co.(Noticee) 3 by Centre for Excellence in Fashion Technology –CEFT(Noticee 6) it was submitted that w.e.f. 1.10.99 CEFT is no longer part of any society and belongs to Mr. Paramjit Singh an NRI.

Eider-e-Commerce Ltd (Noticee 7) relied upon copy of unsigned letter of EIL dated 9.9.03, filed in reply to SEBI's investigation, as reply to this adjudication vide its letter dated 15.6.04. In the said letter, EIL accepted that Parsad & Co and Saran Investments (Noticees 3 & 4) have acquired 1,800 (13,900?) shares of EIL in February 02 at a peak price @ Rs. 700 and asserted that they have not sold

them yet, thereby denying that these trades are artificial. The same was once again reiterated in EIL's another letter dated 9.9.03. EIL further stated that the alleged payment made by Eider-e-commerce to Saran Investments was not to fund the purchase of shares of EIL by the latter and it was "on some other account".

APPRECIATION OF EVIDENCE AND FINDINGS

In terms of regulation 11(2) no acquirer who, together with persons acting in concert with him has acquired, in accordance with the provisions of law, 75% of the shares or voting rights in a company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights, unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

The term 'acquirer' includes a person acting in concert with him. The same is defined as under in the SEBI (Substantial Acquisition of Shares and Takeovers Regulations, 1997

Reg 2(b) "acquirer" means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, *either by himself or with any person acting in concert with the acquirer;*

Reg 2(e) defines "person acting in concert" comprising, -

(1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company.

(2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established :

(i) a company, its holding company, or subsidiary of such company or company under the same management either individually or together with each other;

(ii) a company with any of its directors, or any person entrusted with the management of the funds of the company;

(iii) directors of companies referred to in [sub-clause \(i\) of clause \(2\)](#) and their associates;

(iv) mutual fund with sponsor or trustee or asset management company;

(v) foreign institutional investors with sub account(s);

(vi) merchant bankers with their client(s) as acquirer;

(vii) portfolio managers with their client(s) as acquirer;

(viii) venture capital funds with sponsors;

(ix) banks with financial advisers, stock brokers of the acquirer, or any company which is a holding company, subsidiary or relative of the acquirer.

Provided that [sub-clause \(ix\)](#) shall not apply to a bank whose sole relationship with the acquirer or with any company, which is a holding company or a subsidiary of the acquirer or with a relative of the acquirer, is by way of providing normal commercial banking services or such activities in connection

with the offer such as confirming availability of funds, handling acceptances and other registration work.

(x) any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2% of the paid-up capital of that company or with any other investment company in which such person or his associate holds not less than 2% of the paid up capital of the latter company.

Note: For the purposes of this clause `associate' means:

(a) any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and

(b) family trusts and Hindu Undivided Families.

Reg 2(h) defines 'Promoter' as under :

“(h) "promoter", unless otherwise provided elsewhere, means-

- (i) any person who is directly or indirectly in control of the company; or
- (ii) *any person named as promoter in any document for offer of securities to the public or existing shareholders or in the shareholding pattern disclosed by the company under the provisions of the Listing Agreement, whichever is later; or*
- (iii) any person named as person acting in concert with the promoter in any disclosure made in terms of the Listing Agreement with the stock exchange or any other regulations or guidelines made or issued by the Board under the Act.

and includes,

(a) where such person is an individual,

(i) *his spouse , parents, brothers, sisters or children;*

(ii) *any company in which twenty six per cent.(26%) or more of the equity share capital is held by him or by the persons mentioned in sub-clause (i) or any firm or Hindu Undivided Family in which he or any of the persons mentioned in sub-clause (i) is a partner or member;*

(iii) *any company in which a company specified in sub-clause (ii), holds more than fifty per cent.(50%) of the equity share capital;*

(iv) *any firm in which the aggregate of his holding and the holdings of the persons mentioned in sub-clause (i) is more than fifty per cent.(50%) .*

(b) *where such person is a body corporate,*

(i) *a subsidiary or holding company of that body corporate;*

(ii) *any company in which the said body corporate holds twenty six per cent.(26%) or more of the equity share capital;*

(iii) *any company which holds twenty six per cent.(26%) or more of the equity share capital of the said body corporate;*

(iv) *any company in which persons acting in concert hold twenty six per cent.(26%) or more of the equity share capital and those persons acting in concert also hold twenty six per cent.(26%) or more of the equity share capital in such body corporate;*

(v) *any other body corporate under the same management as the said body corporate within the meaning of sub-section (1B) of section 370 of the Companies Act, 1956;*

It is undisputed that Ms. Rama Sinha (Noticee 1) and Mr. Sanjay Sinha (Noticee 2) held 1,318,710 and 455,420 shares of EIL on 30.9.99. They are also mentioned as promoters of EIL in the prospectus for EILs public issue in March, 1996.

Eider Financial Services Ltd (Noticee 5) has not disputed its shareholding in EIL in its letters dated 25.2.02 and 1.11.02 but it has claimed that it has since been taken over by entities based in Bihar. No further details of the said takeover like the identity of the acquirer, the valuation of the investments, etc.. were not filed. However, it is noted that vide letter dated 28.6.04 of Eider E-Commerce Ltd., the holding of Eider Financial Services Ltd (Noticee no.5) is also included under the holding of promoters of EIL and its associates. Therefore, the contention of Eider Financial Services that it is not a person acting in concert with the promoters is not tenable.

Further, it is noted that Eider Financial Services Ltd (Noticee 5) is mentioned as a company under the same management promoted by the promoters of EIL within the meaning of section 370(1B) of the Companies Act, 1956 in the Prospectus for the public issue of EIL in March 1996. It may also be noted that Eider Financial Services Ltd (Noticee 5) made payments to sub broker Tandon Financial Services and broker Profin Capital Services on behalf of Prashad & Co and Saran Investments respectively, for their purchase of shares of EIL, is a strong and conclusive evidence that Eider Financial Services is acting as person acting in concert with the acquirers. The details of the payments are dealt with later on in this order.

The shareholding of Eider Electronics Industries Ltd (Noticee 8) in EIL is not disputed. As per the material on record, Skytel Communication Ltd (Noticee 9) is mentioned as a company promoted by the Eider Group in the 9th Annual Report of EIL. Further, in the Prospectus of Eider E-Commerce, Noticee 9 i.e. Skytel Communication Ltd, is shown as a promoter group company of Eider and the

same was also confirmed by Mr. Hardam Singh, Company Secretary of Eider Group in his statement dated 09.04.02 to SEBI.

Mata Nainadevi Spinning Mills Ltd (Noticee 10) is mentioned as a company promoted by the promoters of EIL and under the same management within the meaning of 370(1B) of the Companies Act, 1956 in the Prospectus of public issue of EIL.

From the above discussion it is concluded that the shareholding as on 30.9.99 of the acquirers who are promoters of EIL, is as under:

Share Holder	Shares of EIL	%
Rama Sinha (noticee 1)	1,318,710	6.60%
Sinha Sanjay (noticee 2)	455,420	2.28%
Eider Financial Services Ltd. (noticee 5)	11,587,969	57.97%
Eider Electronics Industries Ltd (noticee 8)	1,278,500	6.40%
Skytel Communication Ltd (noticee 9)	1,752,210	8.77%
Mata Naina Devi Spinning Mills Ltd (noticee 10)	500,000	2.50%
TOTAL	16,892,809	84.51%
EIL's equity	19,990,000	100.00%

As per the 9th Annual Report of EIL, Smt.Rama Sinha and Shri Sanjay Sinha who are the original promoters of EIL were also directors of EIL as on 30.9.99. As already seen earlier, Eider Financial Services Ltd., Eider Electronics Industries Ltd, Skytel Communications Ltd, Mata Nainadevi Spinning Mills Ltd are promoters of EIL or belong to the Eider Group.

Having established that the holding of the acquirers including PACs is more than the 75% limit, prescribed in Regulation 11(2) of SEBI (SAST) Regulations, 1997, as above, it is to be further seen whether the acquirers or persons acting in concert with them have increased their stake through further acquisitions in the shares of EIL.

EIL has not disputed the acquisition of shares by Parshad & Co (Noticee 3) and Saran Investments (Noticee 4) vide its letter dated 09.09.03. Eider E Commerce (Noticee 7) also had relied upon the letter dated 09.09.03 in its reply dated 15.06.04. However, EIL has admitted purchase of 1,800 shares of EIL by Parshad & Co and Saran Investments, as against the allegation of purchase of 13,900 shares. Under Regulation 11(2) of SEBI (SAST) Regulations, 1997, no further acquisition of shares can be done either directly or indirectly as they already held more than 75% of EIL's equity on 30.09.99 as can be seen in the table in the preceding pages.

Eider-e-Commerce (Noticee 7) claimed that just because these entities were located in the same building, they cannot be treated as persons acting in concert. But it may be seen that not only the address of the registered office of EIL matched with the contact address of Parshad & Co given in the client form, Shri N K Jain of EIL also wrote to the sub broker, Tandon Financial Services Ltd that he would take full responsibility for the trades of Parshad & Co. The Company Secretary of EIL was furnished with details of payments made by CEFT (Noticee 6), Eider Financial Services Ltd (Noticee 5) and Ors to the sub broker, Tandon Financial Services Ltd, and brokers NAM Securities and Profin Capital but could not satisfactorily explain as to why such huge payments were made from their books to these brokers and on what account. As per the 9th Annual Report of EIL, IITT Society has established a high level fashion and television institute namely Centre for Excellence in Fashion Technology. The Eider Group has promoted IITT. It is significant to note that Mr. Sanjay Sinha (Noticee 2), Director of EIL, was also the authorized signatory of CEFT. Coupled with payments made by CEFT, more particularly detailed hereinafter, it can be concluded that CEFT (noticee 6) is also acting as a person acting in concert in terms of Regulation 2(1)(e)(2)(i) of SEBI (SAST) Regulations, 1997.

In the client introduction form of Parshad & Co with sub broker Tandon Financial Services the contact person is mentioned as Mr. N K Jain. His photo was also affixed thereto. In the 9th Annual Report of EIL, Mr. N K Jain is mentioned as its

Vice President, Corporate Finance and Accounts. Mr. Hardam Singh, Company Secretary of EIL in his statement dated 09.04.02 to SEBI states that Mr. N.K. Jain is one of the top four key personnel of Eider Group and also identified the person in the photo of the client introduction form of Tandon Financial Services, Sub broker as that of Mr. N.K. Jain, the VP (Corporate Finance) of EIL and also in charge of the funds management of Eider group. In the trade log of EIL scrip furnished by NSE, Tandon Financial has entered the client code for the trades of Parshad & Co (noticee 3) as 'CXCEFT'. It may be noted that CEFT refers to Centre for Excellence in Fashion Technology. Therefore, in view of the orders for purchase being given by Mr. N K Jain of EIL, the common address and more importantly, the payment for the purchases made by Parshad & Co met by CEFT, Eider Financial Services Ltd, with complete details of dates of payment, Cheque No. and amount as discussed subsequently. It is concluded that Parshad & Co is a person acting in concert with other noticees when it acquired the shares of EIL.

The preponderance of probability suggests that Prashad & Co. was acting in concert with other noticees in the matter of acquisition of shares of EIL for the aforesaid reasons.

Eider E Commerce (Noticee 7) and Eider Financial Services (Noticee 5) have not denied having made payment to NSE member, Profin Capital Services Ltd., through whom Saran Investments had purchased shares of EIL. However, both of them claimed that they had made payment 'on some other account' but could not explain anything beyond that. Payments made by Eider E Commerce (Noticee 7) and Eider Financial Services (Noticee 5) to NSE member, Profin Capital Services, on behalf of noticee 4, for the purchase of shares of EIL, Shri N K Jain, being the contact person placing the orders, arranging for payments and taking delivery of shares as per the broker makes it clear that Saran Investments (noticee 4) just like Parshad and Co. was acting as a person in concert in terms of Regulation 2(1)(e)(2)(i) of SEBI (SAST) Regulations, 1997 in the matter of acquisition of shares of EIL.

The details of the payments made by CEFT , Eider-e- Commerce, Eider Financial Services Ltd for the purchase of shares of EIL made by Parshad & Co and Saran Investments are as given below:

Date of the Instrument	Instrument No.	Amount (in Rs.)	Issued from
21.02.2000	29936	5,00,000	CEFT
22.02.2000	29938	5,00,000	CEFT
23.02.2000	604840	5,00,000	EFSL issued the cheque for the P.O.
23.02.2000	604839	5,00,000	EFSL issued the cheque for the P.O.
23.02.2000	29939	5,00,000	CEFT
26.02.2000	29945	5,00,000	CEFT
28.02.2000	29946	5,00,000	CHEQUE DIS(CEFT)
28.02.2000	29947	5,00,000	CHEQUE DIS(CEFT)
01.03.2000	Cheque Dishonored	10,00,000	CHEQUE DIS(CEFT)
02.03.2000	604969	10,00,000	CEFT(P.O.)
03.03.2000	164303	5,00,000	CEFT(CHEQUE)
03.03.2000	164032	5,00,000	CEFT(CHEQUE)
03.03.2000	164301	5,00,000	CEFT(CHEQUE)

INSTRUMENT NO.	AMOUNT	DATE	ISSUED BY
331067	500000	07.03.00	City Wide & Communications and Computers (I) Ltd., (Now known as Eider e- Commerce Ltd.)
331068	500000	07.03.00	City Wide & Communications and Computers (I) Ltd.,
88530	339684	24.03.00	Eider Financial Services Ltd.

The standard of proof required in a proceeding of this nature is at variance with the standard of proof required in criminal cases. It is sufficient if the preponderance of probabilities suggests towards the indulgence of the delinquent in the misconduct. The strict rules of Evidence Act and proof beyond reasonable doubt are not applicable to a proceeding of this nature. The Supreme Court's decision in Gulabchand vs Kudilal AIR, 1966, SC 1734 and the decision of the Special Court for trial of offences relating to transactions in securities in the matter of National Housing Bank versus ANZ Grindlays Bank, 1998 (2) LJ 153 is relied upon in this regard

In this context, the Hon'ble Supreme Court decision in *Delhi Development Authority vs Skipper Construction Co. Pvt Ltd.* (1996) 4 Comp LJ 233 (SC) ... AIR 1996 SC 2005 that (para 27 at page 247 of COMP LJ) may be referred to.

“The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where , therefore, the corporate character is employed for the purpose of committing illegality or defrauding others , the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that an individual and members of his family have created several corporate bodies would not prevent the court from treating all of them as one entity belonging to and controlled by that individual and family. If it is found that these corporate bodies are merely cloaks behind which lurks the individual and /or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and /or to defraud people”.

Acting in concert is something about which actual evidence is normally difficult to come. *The Hon'ble Supreme Court in the case of CIT vs East Coast Commercial Co.Ltd.* AIR (1967) SC 768 (Kedia Family case) in the context of Section 23A of the Indian Income Tax Act, 1922 wherein the question was whether Kedia family had acted in concert to control the affairs of the concerned company. In the facts of that case, there was no evidence of any overt act showing that they were acting in concert and thereby constituted and acted as a block. In para 14 of the judgment, the SC observed as follows:

“..... if the members of the Kedia family form a block and had more than 75 per cent of the voting power, it was not necessary to prove that they actually exercised controlling interest. It is the holding in aggregate of a majority of the shares issued by a person or persons acting in concert in relation to the affairs of the company which establishes the existence of a block. It is sufficient, if having regard to their relation, etc., their conduct and their common interest, that

it may be inferred that they must be acting together, evidence of actual concerted acting is normally difficult to obtain, and is not insisted upon.” (p.772)(italics added).

The evidence of connected circumstances and preponderance of probabilities, common course of natural events and combination of facts creating network and purchase of shares of EIL by Parshad & Co. and Saran Investments which were funded by the group companies of Eider like Eider Financial Services Ltd, Eider-e-Commerce Ltd, CEFT, Shri N K Jain, Vice President, Corporate Finance and Accounts of EIL, placing the orders with the brokers for the aforesaid purchases made by Parshad & Co, gives rise to a reasonable inference that the acquisition of the shares of EIL by Parshad & Co and Saran Investments was in effect by the noticees belonging to the Eider Group which funded the brokers as described above.

It is, therefore, established that the acquirers held more than 75% of EIL equity as on 30.09.99 and acquired further shares of EIL, through PAC, namely Parshad & Co, and Saran Investments (noticees 3 & 4), the funding for which was provided by Eider Financial Services, CEFT, and Eider-e-Commerce (noticees 5, 6 & 7). The acquisition was not preceded by a public announcement to acquire further shares of EIL from other shareholders in terms of Regulation 11(2) of SEBI (SAST) Regulations, 1997.

Had the acquirer made a public announcement to acquire further shares from the other shareholders, they would have got an opportunity to tender their shares pursuant to such public announcement and exited from the company at a beneficial price to be determined under the Regulations. Therefore, the interest of the investors is prejudicially affected. Further, such announcement if made, would have also impacted the price movements of the share in the stock exchange and the investors would have had an opportunity to exit from the company. This secondary market exit opportunity to the shareholders of the target company would have been in addition to the open offer which the acquirer was required to make under the Regulations. It is, therefore, not correct to contend that there is no loss caused to the investors. As the acquisition of

shares by the acquirers continued in different spells over a period of time, it is also a case of repeated defaults.

Prior to the Amendment on 29/10/2002, Section 15H of SEBI Act, 1992 reads as under :-

If any person, who is required under this Act or any rules or regulations made there under, fails to

- (i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
- (ii) make a public announcement to acquire shares at a minimum price, he shall be liable to a penalty not exceeding five lakhs rupees.

After the Amendment on 29/10/2002, Section 15H of SEBI Act, 1992 reads as under :-

15H - Penalty for non disclosures of Acquisition of Shares and Takeovers

If any person who is required under this Act or any Rules or Regulations made there under fails to

- (i)
- (ii) make a public announcement to acquire shares at a minimum price
- (iii)
- (iv)

he shall be liable to a penalty of Rs.25 crores or 3 times the amount of profits made out of such failure, whichever is higher.

ORDER

It is pertinent to refer to the order of the SAT in Appeal No.151/2004 dated 7.2.2005 in the matter of Man Industries. It was held by the Hon'ble Tribunal that for irregularities that were committed prior to the amendment of the SEBI Act on 29.10.2002, penalty as existing at the relevant period only is to be imposed and not the new penalties under the amended Act. The Hon'ble SAT held that it is the common ground that at the relevant period the maximum penalty was Rs.5 lacs. The amendment enhancing the penalty to Rs.5 crores came into force with effect from 29th October, 2002. The Hon'ble SAT at page 16 of the order held as under :

“Penalties unless specifically made retrospective must inevitably be only with effect from the date of amendment. Accordingly, we hold that at the relevant time, the maximum penalty was Rs.5.00 lakhs”.

For the aforesaid reasons, the penalty imposed is limited to Rs 5.00 lakhs (Rupees five lakhs only) for failure to make public announcement in accordance with the Regulations in term of Section 15 H (ii) of SEBI Act, 1992.

Having regard to the material on record, the factors contained in section 15J of SEBI Act,1992, the gravity of the charges established, the facts and circumstances and following the order of the Hon'ble SAT in Man Industries Ltd. cited above, I hereby impose a consolidated penalty of Rs.5.00 lakhs (Rupees Five Lakhs only) on

No.	Name of the Entity
1	MRS. RAMA SINHA
2	MR. SANJAY SINHA
3	PARSHAD & CO
4	SARAN INVESTMENTS
5	EIDER FINANCIAL SERVICES LTD.
6	CENTRE FOR EXCELLENCE IN FASHION TECHNOLOGY
7	EIDER E-COMMERCE
8	EIDER ELECTRONICS INDUSTRIES LTD.
9	SKYTEL COMMUNICATIONS LTD.
10	MATA NAINA DEVI SPINNING MILLS LTD.

who contravened the provisions of Regulation 11(2) of SEBI (SAST) Regulations, 1997 read with Section 15H(ii) of SEBI Act, 1992 in the matter of acquisition of shares of Eider Infotech Ltd. They are jointly and severally liable to pay the penalty. It shall be remitted by way of a crossed Demand Draft drawn in favour of "SEBI – PENALTIES REMITABLE TO GOVERNMENT OF INDIA" and forwarded immediately to Shri R S Loona, Executive Director, SEBI, 224, Mittal Court, "B" Wing, Nariman Point, Mumbai – 400 021.

Date : July 11 , 2005

S. V. KRISHNA MOHAN

Place : Mumbai

ADJUDICATING OFFICER