BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/ AO/SM/ 28 /2019-20]

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

In respect of:

Giridharan S
(PAN: AAGPG2646E)

In the matter of Edserve Softsystems Limited.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had analysed the trading activity in the shares of Edserve Softsystems Limited (hereinafter referred to as "ESL/ company") for the period between January 4, 2010 to May 31, 2012 by Giridharan S (hereinafter referred to as "Noticee") for the alleged violation of regulation 31(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "SAST Regulations").

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide an order of Competent Authority dated June 19, 2018, the undersigned was appointed as the Adjudicating Officer under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge the alleged violations of SAST Regulations.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. SEBI/EAD9/SM/JR/20282/2/2018 dated July 18, 2018 (hereinafter referred to as 'SCN') was issued to the Noticee alleging that the Noticee had invoked the pledged shares but made no disclosure under SAST Regulations. The SCN returned undelivered. A public notice in the newspapers (Times of India – Chennai edition on October 18, 2018 and in Daily Thanthi on October 18, 2018) was published directing the Noticee to submit his reply within 14 days. However, no reply was received from the Noticee.
4. In the interest of natural justice and in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on December 4, 2018, vide notice dated November 20, 2018. The notice was affixed at the last known address of the Noticee. The Noticee, vide email dated December 3, 2018 requested for a copy of the SCN was emailed to him on the same date and he was also advised to appear for a personal hearing before the undersigned on January 10, 2019. The Noticee did not appear on the scheduled date. Another opportunity of personal hearing was given to him on April 5, 2019. The Noticee vide letter dated April 1, 2019 informed the undersigned that he shall appear for personal hearing on April 29, 2019. However, due to the General Elections, it was rescheduled to April 26, 2019.
5. The Noticee vide email dated April 23, 2019 expressed his inability to appear for personal hearing on the scheduled date. Final opportunity of personal hearing was given to the Noticee on May 7, 2019. The Authorised representative of the Noticee appeared on the scheduled date and sought documents which was provided to the entity.

6. The Noticee, vide letter dated May 27, 2019 replied to the SCN stating inter alia, the following:
    - *The company was in the control of official liquidator Noticees are not having any kinds of details nor any documentation or communication to prove all their descriptions/ explanations by submission here about the situations and circumstances since all the materials relating to the issues as well as the company correspondence including our official machineries was seized by Official Liquidator in August 2013. However, the Noticees are confident and thereby wish to state here that all their submissions shown as the cause/ as their genuine defence to the allegations are true to their best knowledge and the same could be best verified with the Official Liquidator office attached to the Hon'ble Madras High Court, Chennai by seeking the relevant records to cross check our submissions in defence.*

- *The company was having many lenders but the prime lender of the company was INDIA FACTORING because the company was going through a bad phase and since the company was facing a huge financial crunch it was in dire need of funds and by the advice of the company secretary and also approval by Board, both Giridharan and Gita gave away many of the chunks of shares that constituted majority of their shareholding to the company to be pledged for the loan taken by the company from various lenders more importantly INDIA FACTORING as a collateral security i.e. the promoters i.e. Noticee becoming third party guarantors. Therefore it is pertinent to note that promoter i.e. Noticee themselves had not directly availed loans for themselves/ pledged the shares for themselves but it is the company which had pledged the shares and promoters i.e. Noticee just stood as guarantors to the company. Noticee had not gained anything out of this process and therefore the action of the Noticee had not provided any gain to themselves out of this process of company loan.*
- *The shares were pledged in the year 2011-12 and from then on specific to this pledge, the promoters had informed the company about the pledge and all related disclosures were made by the company to the exchanges as per the Disclosure norms, 2009.*
- *It is pertinent to note here that the company was the beneficiary out of the pledge of shares owned by Noticee due to the loan taken by the company and Noticee had not gained anything out of same therefore by virtue of said transactions no profit was gained by the Noticee.*
- *Thus from the public domain, it is clearly understood that INDIA FACTORING after invoking of the pledge decided to hold back the shares which was transferred to their ownership. As a result, none of these shares were sold to the market during the period between March to May 2012. So the public domain during the period merely gave the impression to the investors at large that the company had a new shareholder by name INDIA FACTORING by way of increasing their shareholding by step by step acquisition of shares by transferring the same to their ownership instead of market sale.*
- *Further, going by the shareholding pattern published at BSE for March, 2012 for the company having the details of transferred ownership of over 7 lakhs shares in the name of INDIA FACTORING clearly reveals that appropriate disclosures would have been made by the company at the right time so that the quarter in question as March, 2012 which is immediately after the invocation of pledge has been in public domain as the authentic information without any delay; even if the company had done any delay in disclosures the same was not known to the promoters who were away from the office*

due to the reasons mentioned elsewhere in this submission and having immediately and regularly informed about the pledge/ sale/ purchase/ invocation if any to the company.

- *With regard to the alleged SAST violations, it is humbly submitted that normally the lender sells the collateral securities when the loan amount is not repaid. It is the company which took the loan in this very case and Noticees kept their shares on collateral basis for more than a lender for multiple such loans therefore it is the company who took the loans and not the Noticee and Noticee had not received any official intimation letters by the lender i.e. INDIA FACTORING with regard to the information to pay the dues else they will sell the shares and recover the loan outstanding given the fact that there was a CFO, Finance Manager and Company Secretary who were dealing with the lenders and the repayment activities and the Noticee 1 was travelling at the time of invocation and the Noticee 2 was unwell and was not regular during this period of invocation.*
- *Therefore with the fact that it is the lender to the company i.e. INDIA FACTORING and such lenders who had invoked the pledge without the knowledge of promoter i.e. the Noticees therefore without knowing whether it is sold or held back by the lenders or not sold yet, the promoters i.e. the Noticee were unqualified since the loans were taken after a duly signed agreement between the company and the lenders and hence the company and the company secretary are with the situation to have responsibility of disclosing the invocation/ sale of shares/ pledged and de-pledged; also the Noticee were on a sincere belief that since they had been informing the company then and there about their shareholding as per disclosure norms, 2009 and also that the company had been receiving constant information from the lenders about a possible invocation of pledge in the absence of default or top up of shares.*
- *Further, the Noticee would also like to humbly submit that they had to pledge major percentage of their shares for the sake of company to get loans from multiple vendors in order to save the company from a disaster of big defaults in repayments/ payments of salaries and statutories as well as for projects and developments and a result the Noticees have lost out majority of their assets and as a result with the company winding up in 2013, the Noticees are struggling at the moment to meet their ends.*

CONSIDERATION OF ISSUES AND EVIDENCE

7. I have carefully perused the charges levelled against the Noticee in the SCN, his reply and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

(a) Whether the Noticee has violated the regulation 31(2) of SAST Regulations?

(b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act?; and,

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act read with the Adjudication Rules?

8. Before proceeding further, I would like to refer to the relevant provisions of SAST Regulations.

Relevant provisions of SAST Regulations:

31. Disclosure of encumbered shares

2) *The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.*

9. I note from the documents on record that the Noticee was a promoter in the company. The company had borrowed money from various lenders, primarily India Factoring. Due to financial distress the shares of the promoters were pledged to India Factoring as collateral security. The details of the invocation of pledged shares as under:

Promoter Name	**Date**	**Quantity of Pledge Invoked**
Giridharan S (AAGPG2646E)	24-Mar-2012	4,48,000

10. As the company failed to repay the money, the lender had invoked the pledge. Regulation 31(2) of SAST Regulations very clearly puts the responsibility of disclosure on invocation of shares on the promoter of the company. The Noticee cannot absolve himself from this duty submitting that the company had pledged his shares with the lenders and it was the duty of the company.

11. The Hon'ble Securities Appellate Tribunal, in Appeal No.66 of 2003 order dated April 15, 2005 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI, has also observed

that, "*the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market*.".

12. In view of the above, I find that the allegation of violation of regulations 31(2) of SAST Regulations by the Noticee stands established. This makes the Noticee liable for penalty under section 15A(b) of the SEBI Act which reads as under:

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made there under,—*
(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

13. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

14. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which read as under:-

Section 15J *-* ***Factors to be taken into account by the adjudicating officer*** *While adjudging quantum of penalty under section 15, the adjudicating officer shall have due regard to the following factors, namely:-*
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

15. I find that the investigation did not bring out the disproportionate gain or unfair advantages to the Noticee and loss caused to investors. The default cannot be said to be repetitive in nature as the non-disclosure happened only on one instance.

ORDER

16. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I(2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticee stand established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, I, hereby impose monetary penalty of ₹ 3,00,000/- (Rupees Three Lakh only) on the Noticee.

17. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department (EFD), Division of Regulatory Action - I [**EFD-DRA-1**] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 OR 2) through e-payment facility into Bank Account, the details whereof are given as below :-

Account No. for remittance of penalty(ies) levied by Adjudication Officer :-

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

18. The Noticee shall forward the said Demand Drafts or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.

19. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	Department of SEBI	Name of Intermediary/other Entity	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.	Purpose of payment (including the period for which payment was made e.g Quarterly, annually)	Bank Name and Account Number from which payment is remitted	UTR No

20. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

21. In terms of Rule 6 of the Adjudication Rules, copy of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date : June 20, 2019
Place : Mumbai

SAHIL MALIK
ADJUDICATING OFFICER