
BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER**

Under Sections 11(1), 11(4), 11(4A), 11B (1) and 11B (2) of the Securities and Exchange Board of India Act, 1992 and Section 12 A (2) of Securities Contracts (Regulation) Act, 1956.

In respect of –

Sl. No.	Noticee	PAN
1.	Educomp Solutions Ltd	AAACE2983M
2.	Jagdish Prakash	AAHPP4161E
3.	Shantanu Prakash	AAJPP1605K

(The aforesaid entities are hereinafter referred to by their respective names / Noticee numbers and collectively as the “Noticees”)

In the Matter of Educomp Solutions Ltd

1. Background

1.1. The present matter emanates from a complaint of Shri. Sourabh Luthra (the “**Complainant**”) dated February 10, 2015 received by SEBI, wherein it was stated that Educomp Solutions Ltd. (“**ESL**”/ “**Educomp**”) had “*inflated its sales and revenues from 2008-2009 onwards and had jacked up its share price to Rs. 5600 per share*”. It was also informed by the Complainant that ESL had written off more than Rs. 900 crore of trade receivables/capital advances given for the purchase of fixed assets.

- 1.2. It is noted that ESL was incorporated in 1994 and operated in the education sector by providing IT enabled education packages to schools. ESL's shares were listed on both the Bombay Stock Exchange and the National Stock Exchange in 2006.
- 1.3. Pursuant to the receipt of the said complaint, SEBI carried out an investigation into the matter to verify the veracity of the information brought out in the complaint and ascertain whether there had been any violation of the provisions of the Securities and Exchange Board of India Act, 1992 (the "**SEBI Act**") and any other Regulations or provisions of securities laws.
- 1.4. Consequent to the completion of investigation in the matter, a common Show Cause Notice dated May 20, 2021 ("**SCN**") was issued to the entities, i.e., Educomp and its directors listed above, based on the findings of the said investigation. It is in this background that the present proceeding, which is to consider the allegations made in the SCN, is before me.

2. The Show-cause Notice

- 2.1. As stated above, the SCN has been issued to the Noticees based on the findings of the investigation carried out by SEBI. In this regard, the following facts have *inter alia* been brought out in the SCN with respect to the conduct of the Noticees:
- a. ESL and its Directors had fraudulently hidden its true financial position from the shareholders by treating its subsidiary Edu Smart Services Pvt. Ltd. ("**ESSPL**") as its client. The revenue showed in its books of account were essentially the revenues generated by its subsidiary(ESSPL) from clients.
 - b. In adopting the above approach, ESL was able to hide the total amount outstanding from debtors i.e., the educational institutions who were its clients and were required to make payments for sale of smart classes.
 - c. Showing ESSPL as a third party instead of a subsidiary and not consolidating the financial statements of ESSPL with its statements up to financial year ("**FY**") 2012-13.

- d. Significant transactions with ESSPL were shown as third party transactions in the financial statements for FYs 2009-10, 2010-11, 2011-12 and 2012-13, even though they were related party transactions.

2.2. Based on the above, the following violations have been alleged against the Noticees in the SCN:

Table – 1

Educomp	Shantanu Prakash	Jagdish Prakash
Section 12 A (b), 12A(c) of the SEBI Act, Regulations 3(b), 3(c), 3 (d), 4 (1), 4(2)(f), 4(2)(k) and 4 (2)(r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“ PFUTP Regulations ”) and Clause 32 and provision (IV) (A) of Clause 49 of the Listing Agreement read with Regulation 103 (2) of the LODR Regulations and the Securities Contracts (Regulation) Act, 1956 (“ SCRA, 1956 ”).	Section 12 A (b), 12A(c) of the SEBI Act, Regulations 3(b), 3(c), 3 (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations and provision (V) (a) of Clause 49 of the Listing Agreement read with Regulation 103 (2) of the LODR Regulations and SCRA, 1956.	Section 12 A (b), 12A(c) of the SEBI Act, Regulations 3(b), 3(c), 3 (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations.

2.3. In view of the allegations made, the Noticees have been called upon to show cause as to why directions under the following provisions should not be passed against them:

Table – 2

Educomp	Shantanu Prakash	Jagdish Prakash
Company has been called upon to show cause as to why suitable directions under Sections 11(1), 11(4), and 11B (1) should not be issued against them. Additionally, the Company has been called upon to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) and penalty imposed under Sections 11 (4A) and 11B (2) read with Section 15 HA of the SEBI Act and in terms of Securities Contracts (Regulations) (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules, 2005 under Section 12 A (2) read with Section 23 E of the SCRA, 1956.	Shantanu Prakash has been called upon to show cause as to why suitable directions under Sections 11(1), 11(4), and 11B (1) should not be issued against him. Additionally, he has been called upon to show cause as to why an inquiry should not be held against him in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) and penalty imposed under Sections 11 (4A) and 11B (2) read with Section 15 HA of the SEBI Act and in terms of Securities Contracts (Regulations) (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules, 2005 under Section 12 A (2) read with Section 23 H of the SCRA, 1956.	Jagdish Prakash has been called upon to show cause as to why suitable directions under Sections 11(1), 11(4), and 11B (1) should not be issued against him. Additionally, he has been called upon to show cause as to why an inquiry should not be held against him in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) and penalty imposed under Sections 11 (4A) and 11B (2) read with Section 15 HA of the SEBI Act.

3. Service of SCN, Inspection of Documents, Personal Hearing, and Replies and Written Submissions from the Noticees –

3.1. The SCN was sent to the Noticees on the addresses available on record. Pursuant to the issuance of the SCN, replies were received from the Noticees. The details with respect to the replies received from the Noticees are as under:

Table – 3

Noticee No.	Noticee	Dates of Replies
1	Educomp Solutions Ltd	July 12, 2021; August 17, 2022; April 25, 2023 and May 23, 2023.
2	Jagdish Prakash	June 24, 2021; July 15, 2021; October 04, 2021; August 15,
3	Shantanu Prakash	2022; August 29, 2022 and May 18, 2023.

3.2. Noticees 2 and 3 also sought inspection of documents. Based upon the request of the said Noticees, an opportunity of inspection of the records/ documents (which were relied upon by SEBI while issuing the SCN) was provided to the said Noticees. Details with respect to the same are provided hereunder:

Table – 4

Noticee No.	Noticee	Date of Inspection of Documents	Inspection Conducted By
2	Jagdish Prakash	July 22, 2021	Ms. Ragini Singh, Advocate
3	Shantanu Prakash		

3.3. The Noticees were also provided opportunities of personal hearing. The details of the personal hearings in the matter are tabulated below:

Table – 5

Noticee No.	Name of the Noticee	Date of Hearing	Represented by
1	Educomp Solutions Ltd	August 03, 2022	Mr. N Nagesh, Sr. Advocate along with Mr. Mahender Khandelwal, Resolution Professional appointed by the NCLT
2	Jagdish Prakash	August 03, 2022 and August 26, 2022	Mr. Vikram Nankani, Sr. Advocate along with Ms. Ragini Singh, Advocate
3	Shantanu Prakash		

3.4. A summary of the replies as submitted by the Noticees is provided hereunder:-

Noticee 1 (Educomp Solutions Ltd.)

3.5. Noticee 1, through the Resolution Professional, Mr. Mahender Khandelwal, in its replies listed above has *inter alia* submitted the following:

- a. ESL was undergoing Corporate Insolvency Resolution Process (“**CIRP**”) in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) pursuant to the order dated May 30, 2017 of the National Company Law Tribunal, Principal Bench, New Delhi.
- b. Mahender Khandelwal had been appointed as the Resolution Professional (“**RP**”) to conduct the CIRP vide order dated September 12, 2017 of the NCLT. In accordance with the above-mentioned orders, the erstwhile management of ESL stood suspended, and the RP was conducting the CIRP of ESL in terms of the IBC.
- c. Section 14 of the IBC required that no proceeding be instituted or continued during the moratorium period, which began from the date of commencement of CIRP and continued till the completion of the CIRP.
- d. Once moratorium had been declared under Section 14 of the IBC, SEBI could not have proceeded against a corporate debtor under the SEBI Act or any rules and regulations made thereunder, till the completion of the CIRP.
- e. Section 238 of the IBC had an overriding effect whereby the provisions of the IBC would continue in full force even if they were inconsistent with any other prevailing law.
- f. The name of ESL be removed from the SCN, and it be discharged from the present proceedings.

3.6. The Noticee in its replies has relied on the following case laws:

- a. *M/s. Innoventive Industries Ltd. vs. ICICI Bank Ltd.*, ((2018) 1 SCC 407) to contend that proceedings under any law against a corporate debtor could not be proceeded with once moratorium was in effect.
- b. Order dated October 09, 2020 of the Hon'ble SAT, passed in Appeal Number 206 of 2020, *Dewan Housing Finance Corporation Ltd. vs. Securities and Exchange Board of India* and Order dated 22.06.2022 of the Hon'ble SAT in *Reliance Capital Limited* to contend that where moratorium under Section 14 of IBC had come into effect, SEBI would have no jurisdiction.
- c. *Pr. Commissioner of Income Tax v. Monnet Ispat and Energy Ltd.* (SLP(C) No. 6483 of 2018) to contend that anything incongruous in any other statute, including the Income Tax Act, would be overridden by Section 238 of the IBC.

Noticees 2 (Jagdish Prakash) and 3 (Shantanu Prakash)

3.7. Noticees 2 and 3 through their common replies/submissions have *inter alia* stated the following:

- a. The SCN was issued on May 20, 2021 after the expiry of more than thirteen (13) years since the investigation period. There had been an inordinate delay in the issuance of the SCN, which had not been explained by SEBI, and on that ground the present proceeding should be discontinued and the SCN withdrawn.
- b. All the acts including transfer of business or subscribing to the preference shares of ESSPL or execution of corporate guarantee for loans granted to ESSPL were undertaken in accordance with law, in due compliance with the provisions of the Companies Act, then in force, including by obtaining necessary approvals from shareholders under Section 293(1)(a) and/or Section 372A of the Companies Act, 1956 (the "**1956 Act**"). The acts which were permissible by law at that time,

could not be considered to be in violation of the SEBI Act and/or the PFUTP Regulations.

- c. The statutory definition of control in Section 4(1)(a) of the 1956 Act and contained in Accounting Standards 18 and 21 had been artificially enlarged. The ingredients to establish control as existing in Section 4(1)(a) of the 1956 Act were not satisfied. The relationship between ESL and ESSPL also did not fall within the definition of control as defined in AS 21.
- d. Had there been a relationship, as alleged in the SCN, between ESL and ESSPL, the Statutory Auditors would have ensured compliance under Section 211 of the 1956 Act, together with disclosure of consolidated and standalone results, as the Statutory Auditors were obligated to do under Section 227 of the 1956 Act. The Investigation Report has noted replies of the statutory auditors of Educomp i.e. M/s Anupam Bansal & Co. and M/s Haribhakti & Co. to the clarifications/ comments sought by SEBI. The statutory auditors have confirmed that standard auditing procedures and processes were followed and independent verification of clients, contracts and third party balance confirmations were conducted on test-check/ sample basis in accordance with the applicable audit standards issued by the ICAI. The Investigation Report did not have any adverse findings against the statutory auditors of ESL.
- e. The RP had sought an Investigation Audit, and an independent agency, BDO India LLP had been appointed to conduct the same. BDO India LLP conducted a review of the transactions carried out by ESL since its inception and submitted its report in February, 2018. While, the Special Investigation Audit report made observations in relation to related party transactions, preferential transactions and fraudulent transactions, no issues were raised in this report regarding ESSPL being a subsidiary of ESL.
- f. When the law was changed by way of the Companies Act 2013 (the “**2013 Act**”), appropriate disclosures were made. The amendments made to the Companies Act, 2013 were not retrospective in effect.

- g. 45,00,000 redeemable non-convertible preference shares of ESSPL were subscribed to by ESL. As the said preference shares had been issued under Section 87 of the 1956 Act they did not carry voting rights. So, at no point in time did ESL exercise or possess voting rights in ESSPL. So ESL did not control ESSPL.
- h. By way of a special resolution dated March 18, 2010, the shareholders of ESL had approved the grant of a corporate guarantee regarding the loans granted to ESSPL under section 372A of the 1956 Act. In fact, the name of ESSPL was disclosed in the postal ballot sent to the shareholders by ESL before the said special resolution was passed. So, the public shareholders of Educomp were specifically made aware of the proposal to grant a corporate guarantee for the loans of ESSPL. The said resolution was passed with an overwhelming majority (850 shareholders voted in favour of the resolution constituting 99.994% of total shares polled by voters representing 80.02% of the total share capital of the company).
- i. Before the Smart Class contracts were transferred to ESSPL, the shareholders of ESL had granted approval to the said transfer to ESSPL u/s 293(1)(a) of the 1956 Act vide a special resolution dated December 23, 2009. The said resolution was passed with an overwhelming majority (493 shareholders voted in favour, constituting 99.9977% of the total shares voted and 73.37% of the total share capital of ESL).
- j. The transfer of the Build, Own, Operate and Transfer (“**BOOT**”) business to ESSPL was disclosed in the Standalone Unaudited Financial Results for the quarters ended December 2009 and March 2010. They were also available on the website of the Bombay Stock Exchange, as the same were duly filed with the Stock Exchanges and were published in newspapers having nationwide circulation.
- k. The SCN had incorrectly stated that the investment of ESL in 8% cumulative non-convertible preference shares of ESSPL was reported as long- term investment by ESL without disclosing the name of ESSPL. In the Annual Report for FY 2010-

11, ESL had disclosed its investment as 45,00,000 8% Cumulative Redeemable Non- Convertible preference shares (Previous year 2,000,000) of Rs. 100 each, fully paid- up in “ESSPL” under the heading “investment- Other”. The said investment of ESL in ESSPL had been continuously disclosed in each and every Annual Report of ESL since FY 2009-10.

- l. ESL did not show ESSPL as its subsidiary from FY 2013-14 onwards. No such information could be gathered from the Annual Report of FY 2013-14, as at the relevant time, as per law, ESSPL was not a subsidiary of ESL. ESSPL was declared as a subsidiary in FY 2014-15 purely as a consequence of the 2013 Act coming into force with effect from April 1, 2014 and the subsequent change in law, and for no other reason.
- m. The Corporate Debt Restructuring package (“**CDR Package**”) had never mandated that ESL should be shown as a subsidiary of ESSPL. Also, the Companies Act would prevail over the CDR.
- n. Shantanu Prakash was not solely responsible for the “overall operations” and the “conduct of the business” of ESL since its incorporation. Several professionals, such as, chartered accountants, company secretaries, legal consultants were involved in the running of the business. Also, even though Noticees 2 and 3 held Master’s degrees in Commerce and Business Management respectively, they were only concerned with the overall smooth functioning of ESL, and did not concern themselves with the legal intricacies and compliances of SEBI Rules and Regulations which was beyond their realm of understanding, for which guidance was taken from chartered accountants, lawyers and auditors.
- o. The CFOs of ESL, namely Sangeeta Gulati and Ashish Gupta, enjoyed a formidable reputation as experts in the fields of finance and business. Noticees 2 and 3 were entitled to rely upon their judgment and advice when it came to legal compliances regarding the disclosures in Annual Reports etc. Vide order dated May 31, 2022, the Ld. Adjudicating Officer of SEBI had not passed any adverse order or directions against the former CFOs, Sangeeta Gulati and Ashish Gupta in relation to the instant matter in the same facts and circumstances.

- p. ESL vide an agreement dated March 31, 2014 acquired the trade receivables of ESSPL. The said transaction was subsequently declared as a related party transaction under Section 188 of the 2013 Act in the Annual Report of ESL for FY 2014-2015 owing to the fact that in FY 2014-2015, ESSPL had acquired the identity of Educomp's subsidiary due to the enactment of the 2013 Act.
- q. While Abhinav Dhar and Pramod Thatoi were directors of certain subsidiaries or related companies of ESL, by virtue of that alone, it could not be concluded that ESSPL was a subsidiary of ESL. Further, the law allowed individuals to be directors in 20 companies simultaneously, and no inference of a company being a related party/ subsidiary could be arrived at on that ground.
- r. Pramod Thatoi, who was the initial subscriber/director of ESSPL and had quit ESL on June 30, 2009, had a Digital Signature Certificate ("**DSC**") which was linked to the email ID of the Compliance Officer of Educomp (Mohit Maheshwari) at the time, i.e., in FY 2009-10. It was a standard practice at ESL to generate and register digital signatures of every employee through the email address of the Compliance Officer. So, the DSC of Pramod Thatoi showed the email address of Mohit Maheshwari i.e., mohit.maheshwari@educomp.com. The DSC of Pramod Thatoi was made on April 21, 2009, during the term of his employment with ESL, and had a validity of two years i.e. up to April 21, 2011. Pramod Thatoi became a director of ESSPL on July 2, 2009/October 01, 2009 and was using his old DSC thereafter for the period of its validity for the sake of convenience. After the expiry of the validity of the DSC, Pramod Thatoi on April 14, 2011 renewed his DSC and linked it with his ESSPL email ID i.e., pramod.thatoi@edusmartservices.com and the same was registered with MCA.
- s. Abhinav Dhar was an initial subscriber of ESSPL and was holding 50% equity shares when it was incorporated on July 2, 2009. Subsequently, Abhinav Dhar transferred his shareholding to Ashok Mehta on September 16, 2009. So, Abhinav Dhar held the shares of ESSPL only for a short period of about 2 months. He never held any position (director or employee) of ESSPL during this short span of time. Ashok Mehta was an employee of ESL from September 1994 to

June 2009 only, i.e., he resigned from his employment with ESL on June 30, 2009 before the incorporation of ESSPL.

- t. Ashok Mehta and Abhinav Dhar were never part of the Key Managerial Personnel (“**KMP**”) of ESL as alleged in the SCN. A company in its ordinary course of business is supported by its KMP and Senior Management Personnel (“**SMP**”). SMP are usually heads of different departments of a company but have neither the power nor the responsibility to decide the corporate policy. Abhinav Dhar was declared as part of SMP of ESL in the Annual Reports for the years 2006-2007 to 2012 - 2013. Further, Ashok Mehta was declared as SMP of ESL in the Annual Report of FY 2013 - 2014. No Annual Report of Educomp contained the names of Abhinav Dhar and Ashok Mehta as KMP since in accordance with the law, neither of the two individuals was ever part of the decision-making process of Educomp as a whole.
- u. During the period starting October 01, 2009 to August 30, 2013, Ashok Mehta, held the position of a Promoter-cum-Managing Director in ESSPL, and was not bound to report to Noticees 2 and 3 as he had ceased to be an employee of ESL. There was nothing on record to indicate that even after leaving the employment of ESL, Ashok Mehta reported to Noticees 2 and 3 regarding the affairs of ESSPL.
- v. ESSPL was a separate and distinct entity with whom ESL entered into a written agreement to provide products and services. Accordingly, ESSPL, ESL and the schools would enter into a tri-partite agreement for the sale of smart classes. The business arrangement was such that ESSPL would provide hardware and content licenses as procured from ESL to the customers. In addition, ESSPL would provide support services etc. to the concerned schools in relation to the Smart Class Program. Such an arrangement was mutually agreed to between the two entities and was seen as an opportunity by ESL for business procurement. Accordingly, for the products and services supplied by ESL to ESSPL, ESL raised invoices on ESSPL.

- w. The payment structure adopted by ESSPL to pay ESL against the invoices raised by ESL was ESSPL's responsibility and concern, and not that of ESL. The said process was a business decision and was taken after due consideration with an intent to provide access to quality education to all sectors of society. Thus, ESSPL was merely a client/third party to ESL on which the latter raised invoices for the services it provided and ESSPL was liable to pay ESL for the same.
- x. ESL's business was to provide ESSPL with the hardware and content licenses and subsequently, as mentioned in the SCN too, ESL would raise separate invoices on ESSPL for an amount towards the hardware supplied and the content licenses. Once the services, hardware etc. were provided by ESL to ESSPL, the former's responsibility to ESSPL was complied with, and beyond that it was on ESSPL to ensure that the material bought from ESL was utilised by selling the same to ESSPL's customers in turn. As such, ESSPL was legally and justifiably shown as a debtor in the books of ESL.
- y. Further, with respect to the premature termination of contracts, the same was due to certain business difficulties owing to the large school base. Further, it was an aspect of all businesses that at times certain goods sold were returned by customers or contracts were terminated prematurely owing to a plethora of reasons. Furthermore, the payments were being withheld and delayed by the schools in violation of the terms of their tri-partite contracts. Such issues were resolved through settlement with the schools in an attempt to obtain business in future. Some of the Clients/Schools' accounts were shown as 'doubtful to recover' in keeping with prudent accounting practice considering the delay in collection by ESL of its dues.
- z. It was only pursuant to the approved CDR package that Educomp on March 31, 2014 acquired ESSPL's trade receivables amounting to Rs. 1,034.92 Crore and in the financial year ending on March 31, 2015 acquired Rs. 149.87 Crore of trade receivables from ESSPL. The lenders of ESL in a Joint Lenders Meeting while formulating the restructuring package discussed that both Educomp and ESSPL were facing problems specific to the education industry. Further, the delayed receivables from ESSPL had put severe pressure on the liquidity position of ESL.

The lenders were of the opinion that the joint working of the two entities would help improve the cash-flow position of Educomp in the initial years while ensuring that ESSPL's lenders would get the benefit of an ongoing business. Majority of ESSPL's lenders also agreed and joined the restructuring package of ESL.

3.8. The Noticees in their replies have relied on the following case laws:

- a. *M Velayudhan Vs. Registrar of Companies* (Kerala High Court) to contend that "controls the composition of board of directors" should be read in accordance with Sub-section (2) of Section 4 of the Companies Act and that the said Sub-section conceived of control only if the company which claimed control could 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.
- b. *Oriental Industrial Investment Corporation Vs. Union of India* [1981J 51 Comp Cas 487 (Del) to contend that the control of the composition of the board of directors was established only if the holding company had the independent power to appoint or remove the holders of all or a majority of the directors and the 1956 Act mentioned three circumstances in which the requisite power to appoint was considered to exist.
- c. Order of the Hon'ble SAT in *DLF Limited V. Securities and Exchange Board of India dated March 13, 2015 (Appeal No. 331 of 2014)* to contend that the mere fact that the directors on the board of the three companies who might have been the employees of the company or its wholly owned subsidiaries would not lead to an inference of decisive control over the composition of the board of such companies by such other company.
- d. *DLF Qutub Enclave V. State of Haryana* [(2003) 5 SCC 622] to contend that the employees or ex-employees being associated with ESSPL, can only create prejudice and cannot be the basis of violation of law, more so, in the absence of an express provision.

4. Issues –

4.1. In view of the submissions made, the issues for consideration are: –

- I. Whether ESL failed to disclose ESSPL as its subsidiary for the FYs 2009-10, 2010-11, 2011-12 and 2012-13?**
- II. Whether ESL failed to disclose financial details of its subsidiary in its consolidated accounts and financial statements in the Annual Reports and failed to disclose the transactions with ESSPL as related party transactions for FYs 2009-10, 2010-11, 2011-12 and 2012-13?**
- III. Whether ESL had not shown a true and fair picture of its financial position for FYs 2009-10, 2010-11, 2011-12 and 2012-13 and whether the same could be considered as fraudulent under the SEBI Act and PFUTP Regulations?**
- IV. Whether Jagdish Prakash and Shantanu Prakash directors of ESL can be held liable for the actions of ESL?**

5. Consideration and findings –

5.1. Before proceeding with the consideration of the substantive allegations made in the SCN, it shall be relevant to first deal with the preliminary issue raised by the Noticees.

Proceeding not maintainable owing to delay

5.2. It has been contended by Noticees 2 and 3 that the present proceeding was not maintainable owing to delay. In this regard, I note from the record that the complaint in the matter was received on February 10, 2015, wherein *inter alia* it was alleged that ESL had inflated its sales and revenues. Pursuant to the receipt of the said complaint by SEBI, an investigation was ordered in the matter in March, 2015.

5.3. Consequently, information and documents were sought from ESL. In this regard, the correspondence exchanged between SEBI and ESL, and other relevant entities post the receipt of complaint in 2015, is provided hereunder: -

Table – 6

S. No.	Date	Event
1.	July 29, 2015	Preliminary Examination Report submitted by Forensic Accounting Cell of SEBI (“ FAC ”) with regard to the complaint received. The said report was for the period: FY 2008-09 to FY 2014-15. The said report <i>inter alia</i> stated that provisions/write-offs as well as negligible collection from the remaining debtors were noted. So, the same required detailed investigation.

2.	August 20, 2015	Plan submitted by the Investigation Department for detailed investigation in the matter.
3.	September 08, 2015	Summons issued to ESL for information on the matter.
4.	September 22, 2015 and September 24, 2015	Email received from ESL seeking additional time of 30 days to submit its reply. Email dated September 24, 2015 issued by SEBI advising ESL to provide its reply by October 09, 2015.
5.	October 19, 2015	Reply received from ESL.
6.	December 11, 2015	Email to ESL asking it to provide the reply in digital format.
7.	December 16, 2015	Reply received from ESL in digital format.
8.	June 10, 2016 – July 01, 2016	Letters issued to sundry debtors of ESL in respect of parties against which provisions had been made in the books of account.
9.	July 12, 2016	Email received from International Finance Corporation (“ IFC ”), one of the creditors of ESL, stating that it had provided loan/s to ESL and alleging certain lapses and discrepancies in the financial statements of ESL, as per a report commissioned by them through Ernst and Young.

10.	August 02, 2016	Letters issued to vendors of ESL in respect of whom provisions had been made in the books of account seeking details.
11.	March 10, 2017	Meeting with IFC regarding the letter addressed by them and the report submitted by Ernst and Young.
12.	November 30, 2017	Additional information sought from ESL.
13.	December 13, 2017	Reply received from ESL.
14.	December 21, 2017	Letter received from RP informing of the commencement of the CIRP process in respect of ESL under the IBC, pursuant to the order dated May 30, 2017 of the National Company Law Tribunal, Principal Bench, New Delhi.
15.	January 15, 2018	Summons issued to twenty eight debtors/vendors of ESL for information.
16.	February 05, 2018	Additional information sought from ESL.
17.	February 28, 2018	Report of E&Y provided by IFC forwarded to ESL so as to be laid before its audit committee and examined in the context of the provisions of securities laws.
18.	March 13, 2018	Letter received from ESL stating that since it was undergoing the CIRP process, the entire team was assisting the RP. ESL informed that it was not possible to deliberate and

		assimilate information with respect to the issues raised in the Report of E&Y provided by IFC.
19.	April 2018	Details were sought from the entities to whom capital advances had been given by ESL.
20.	May 15, 2019	Copy of the Special Investigation Audit Report commissioned by the RP in respect of the transactions of ESL was sought.
21.	June 04, 2019	Copy of the Special Investigation Audit Report commissioned by the RP in respect of the transactions of ESL was provided to SEBI.

5.4. Consequent to the collation of voluminous information pertaining to the present matter, the first iteration of the Investigation Report was prepared on January 20, 2020. Subsequently, after internal deliberations on the said draft, the final report was approved on November 02, 2020. The SCN was issued on May 20, 2021.

5.5. From the facts brought out in Table- 6, it is evident that a great amount of information had to be gathered and analysed since the matter was old and pertained to four financial years. Owing to the same, the investigation in the matter was prolonged.

5.6. It is not in doubt that the initiation of proceedings has to be within a reasonable period of time. In this regard, the Hon'ble Supreme Court in the case of *Adjudicating Officer, Securities and Exchange Board of India v Bhavesh Pabari*, (2019) 5 SCC 90 has opined that reasonable time, would *inter alia* depend upon the facts and circumstances of the case, nature of the default, prejudice caused etc. The circumstances surrounding the initiation of the present proceeding, has already been brought out in the aforesaid paragraphs. As required under the above-mentioned

judgement of the Supreme Court, Noticees 2 and 3 have not demonstrated any specific prejudice caused to them. On the contrary, not initiating action would gravely prejudice the interests of investors.

5.7. It is acknowledged that the Hon'ble Securities Appellate Tribunal ("**SAT**") in many cases has held that inordinate delay could be a ground for the quashing of a proceeding. In the same vein, the Hon'ble SAT has in its Order dated February 05, 2020 (*Appeal No. 376 of 2019, Jindal Cotex Limited and Ors Vs. SEBI*) and Order dated February 15, 2021 (*Appeal No. 168 of 2020, G. V. Films Ltd. Vs. SEBI*) exempted delay where the facts adequately justified the time taken for issuance of SCN. In the above matters, which related to the issuances of GDRs, the Hon'ble SAT recognised the complexity involved in those matters and the time taken by SEBI to gain information relating to the same from various entities. It is stated that since the present matter also involved information being gathered from multiple sets of entities and ESL itself being under CIRP, time was consumed in the issuance of the SCN. Accordingly, it is stated that the present matter is similar to the principles enunciated by the Hon'ble SAT in *Jindal Cotex Limited* and *G. V. Films Ltd.*

5.8. Thus, in view of the aforesaid and considering that the issuance of SCN in the present matter has been made in the interests of investors, I find that the issuance of SCN has been within a reasonable time and occasioned by fair reasons. Also, the concomitant facts as brought out above, give satisfactory account for the delay, if any. Accordingly, I do not find any merit in the assertion of Noticees 2 and 3 that the present proceeding is not maintainable owing to delay.

Issue I – Whether ESL failed to disclose ESSPL as its subsidiary for FYs 2009-10, 2010-11, 2011-12 and 2012-13?

5.9. The principal allegation in the SCN is that ESSPL was a subsidiary of ESL during the FYs, 2009-10, 2010-11, 2011-12 and 2012-13, and the same was not disclosed. At the outset, it is emphasised that the present proceeding pertains to allegations against the Noticees for acts/omissions during FYs 2009-10, 2010-11, 2011-12 and

2012-13. Accordingly, the allegations against the Noticees shall be considered on the obligations contained in the Listing Agreement, which preceded the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 that came into force in 2015 (“**LODR Regulations**”). Additionally, it is stated that for FYs 2009-10, 2010-11, 2011-12 and 2012-13, the provisions contained in the 1956 Act were applicable. However, there was a change in law with the enactment of the 2013 Act, which came into effect on April 01, 2014.

5.10. In this regard, the SCN has brought out the grounds based on which the above allegation has been made, which are summarised hereunder:

- a. *ESSPL was incorporated on July 02, 2009. The initial subscribers were Abhinav Dhar and Pramod Thatoi. They were each holding 50% of the equity shares of ESSPL.*
- b. *Both Abhinav Dhar and Pramod Thatoi were also directors in several subsidiary/ related companies of ESL during the investigation period.*
- c. *The documents filed on MCA during FY 2009-10, which were digitally signed by Pramod Thatoi, digital certificate showed that his email address was mohit.maheshwari@edLicomQ.com which was also the email of the compliance officer of Educomp.*
- d. *Ashok Mehta held the position of promoter cum Managing Director in ESSPL (from October 01, 2009 to August 30, 2013). Subsequently, the shareholding of Abhinav Dhar was transferred to Ashok Mehta. Ashok Mehta was employed by ESL, prior to his service with ESSPL and he was again re-employed by Educomp with effect from September 01, 2013 as a senior employee designated as President - Edu Reach. Additionally, he was director in other related companies/subsidiaries at the relevant time.*
- e. *As per offer document filed for its public issue, Educomp had identified Abhinav Dhar and Ashok Mehta as part of its Key Management Personnel (KMP). Further, both of them were reporting directly to Mr. Shantanu Prakash, MD & CEO of Educomp.*

- f. *Abhinav Dhar was a senior employee - director of Business & Operation, of Educomp. He was also in charge of area relating to School Learning Solutions (Smart Class) and was with Educomp since November 01, 2002 and resigned only during FY 2014-15.*
- g. *In FY 2009-10, Educomp subscribed to a total 20,00,000 of 8% Cumulative Redeemable Non-Convertible Preference shares of face value of Rs. 100 each (worth Rupees Twenty Crore) of ESSPL. ESSPL, in a meeting of its Board of Directors, held on October 12, 2009 had passed a resolution to allot 20,00,000 of 8% Cumulative Redeemable Optionally Convertible Preference Share of Rs. 100/- at no premium to Educomp and authorised Abhinav Dhar (who is also an authorised signatory of ESSPL, other than the directors of ESSPL), to sign and issue the said share certificate of ESSPL.*
- h. *Mr. Abhinav Dhar, who was an initial subscriber of ESSPL and also authorized to sign and issue the share certificate of ESSPL, was a senior employee (KMP) - director of Business & Operation and in- charge of School Learning Solutions (Smart Class) section of Educomp.*
- i. *Mr. Ashok Mehta used to be KMP and senior employee of Educomp prior to him becoming a director in ESSPL.*
- j. *The other director and shareholder of ESSPL, Mr. Pramod Thatoi, was director in several related companies of Educomp.*
- k. *The above facts demonstrate that Educomp was controlling the activities of ESSPL since its incorporation. ESSPL was in fact a subsidiary of Educomp in accordance with section 4 (1) (a) of the Companies Act 1956 (corresponding clause 87 of section 2 of the Companies Act 2013), which states that a company is deemed to be a subsidiary of another if, other controls the composition of its Board of directors.*
- l. *Moreover, in Corporate Debt Restructuring (CDR) by the consortium of banks (Annexure 3), also it was mandated to merge Educomp and ESSPL*

as the business and operations of these two companies were intricately linked. Subsequently, in FY 2013-14, Educomp declared ESSPL as a subsidiary even when there was no change in its equity shareholding.

5.11. In response to the allegations made in the SCN, reply has been received from the RP on behalf of ESL. The RP has essentially argued that in light of the judgments of the Hon'ble Supreme Court, the present proceeding in respect of ESL, which is undergoing CIRP under the IBC, be dropped. I reserve to consider the arguments advanced by the RP with respect to the CIRP in the later part of this Order.

5.12. However, for the consideration of the respective liabilities of Jagdish Prakash (Noticee 2) and Shantanu Prakash (Noticee 3), who were the directors of ESL, it is essential to first establish the events surrounding the actions/inactions of ESL. As brought out before, replies have been received from Jagdish Prakash and Shantanu Prakash, who were the directors of ESL. These replies throw light on the working of ESL and also attempt to defend the actions of the company. So, in establishing the events surrounding the actions/inactions of ESL and considering the allegations against the company, I shall consider the defences advanced in the replies received from Jagdish Prakash and Shantanu Prakash, as found appropriate.

5.13. It is noted from the SCN that the principal basis for the allegation that ESSPL was a subsidiary of ESL was the close and almost indistinguishable financial dealings between ESSPL and ESL and the close relationship of the shareholders/directors of ESSPL with ESL.

5.14. In this respect, it is noted that the shareholders of ESSPL at different points were Abhinav Dhar, Pramod Thatoi and Ashok Mehta. The shareholding details with respect to ESSPL are as under:

Table – 7

FY 2009-10	FY 2010-11 to FY 2014-15
Abhinav Dhar- 5000 shares of Rs. 10	Pramod Thatoi – 5000 shares of Rs. 10
Pramod Thatoi – 5000 shares of Rs. 10	Ashok Mehta – 5000 shares of Rs. 10
Ashok Mehta – 5000 shares of Rs. 10 <i>(by transfer of shares from Abhinav Dhar on September 16, 2009)</i>	

5.15. Additionally, it is noted from the Investigation Report that other than the equity shares, preference shares had also been issued by ESSPL. The details and the holders of such preference shares are provided hereunder:

Table – 8

Shareholder	Financial Year of Issuance	Details of Preference Shares
Educomp	FY 2009-10	20,00,000 8% cumulative redeemable optionally convertible preference shares 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 Forty Five Crore Rupees)
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 January 04, 2014

5.16. In this regard, reference is made to Section 4 of the 1956 Act. The said provision is reproduced hereunder:

“ 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.

ILLUSTRATION

Company B is a subsidiary of Company A, and Company C is a subsidiary of Company B. Company C is a subsidiary of Company A, by virtue of clause (c) above. If Company D is a subsidiary of Company C, Company D will be a subsidiary of

Company B and consequently also of Company A, by virtue of clause (c) above, and so on.

(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 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.

(3) In determining whether one company is a subsidiary of another - (a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it ; (b) subject to the provisions of clauses (c) and (d), any shares held or power exercisable - (i) by any person as a nominee for that other company (except where that other is concerned only in a fiduciary capacity) ; or (ii) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity, shall be treated as held or exercisable by that other company ; (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded ; (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary [not being held or exercisable as mentioned in clause (c)] shall be treated as not held or exercisable by that other, if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) For the purposes of this Act, a company shall be deemed to be the holding company of another if, but only if, that other is its subsidiary.

(5) In this section, the expression "company" includes any body corporate, and the expression "equity share capital" has the same meaning as in sub-section (2) of section 85.

(6) In the case of a body corporate which is incorporated in a country outside India, a subsidiary or holding company of the body corporate under the law of such country shall be deemed to be a subsidiary or holding company of the body corporate within the meaning and for the purposes of this Act also, whether the requirements of this section are fulfilled or not.

(7) A private company, being a subsidiary of a body corporate incorporated outside India, which, if incorporated in India, would be a public company within the meaning of this Act, shall be deemed for the purposes of this Act to be a subsidiary of a public company if the entire share capital in that private company is not held by that body corporate whether alone or together with one or more other bodies corporate incorporated outside India."

5.17. It is relevant to note that the 1956 Act did not define the term 'control'. However, for the purposes of the present examination, upon a reading of Section 4 of the 1956 Act, as brought out above, it is gathered that for a relationship of holding company (Company A) and subsidiary company (Company B) to subsist between the said companies, any one of the following conditions should be satisfied—

- a. Company A holds more than half in nominal value of Company B's equity share capital;
- b. Company A has the power to exercise at its discretion, without the consent or concurrence of any other person, to appoint/remove all or a majority of the directors of Company B; or

- c. Company B is a subsidiary of Company C and Company C is a subsidiary of Company A.

5.18. In the context of the present matter, it has already been brought out that during FY 2009-10, Abhinav Dhar and Pramod Thatoi held 50% each of the share capital of ESSPL, while from FY 2010-11 to FY 2014-15 Pramod Thatoi and Ashok Mehta held 50% each of the share capital of ESSPL. So, ESL did not directly have any equity share capital holding in ESSPL. Similarly, it has neither been contended in the SCN nor gathered from the record that ESSPL was a subsidiary of some other company, which in turn was the subsidiary of ESL. In such circumstance, this condition would not be applicable in the present matter.

5.19. However, condition (b), as brought out in paragraph 5.17, is relevant for consideration in the present matter i.e., the power of ESL to exercise at its discretion, without the consent or concurrence of any other person, to appoint/remove all or a majority of the directors of ESSPL. It has been brought out in the SCN and the replies of Noticees 2 and 3 that Ashok Mehta and Pramod Thatoi had been the directors of ESSPL since inception, and continued to hold their positions throughout the relevant period. It has also been brought out in the SCN that at the time of inception in FY 2009-10, Abhinav Dhar and Pramod Thatoi were the two shareholders of ESSPL, which subsequently changed with Ashok Mehta acquiring the stake of Abhinav Dhar. The change of shareholders, it must be noted, was by way of transfer of shares.

5.20. It is gathered from the documents available on the MCA website that ESSPL was granted a certificate of incorporation on July 02, 2009. It is also gathered that the total share capital of ESSPL was Rs. 1,00,000 of 10,000 equity shares, and the same had been fully subscribed and paid-up by Abhinav Dhar (5,000 shares) and Pramod Thatoi (5,000 shares). In this regard, it would be relevant to provide hereunder some of the important financial events concerning ESSPL in FY 2009-10.

Table – 9

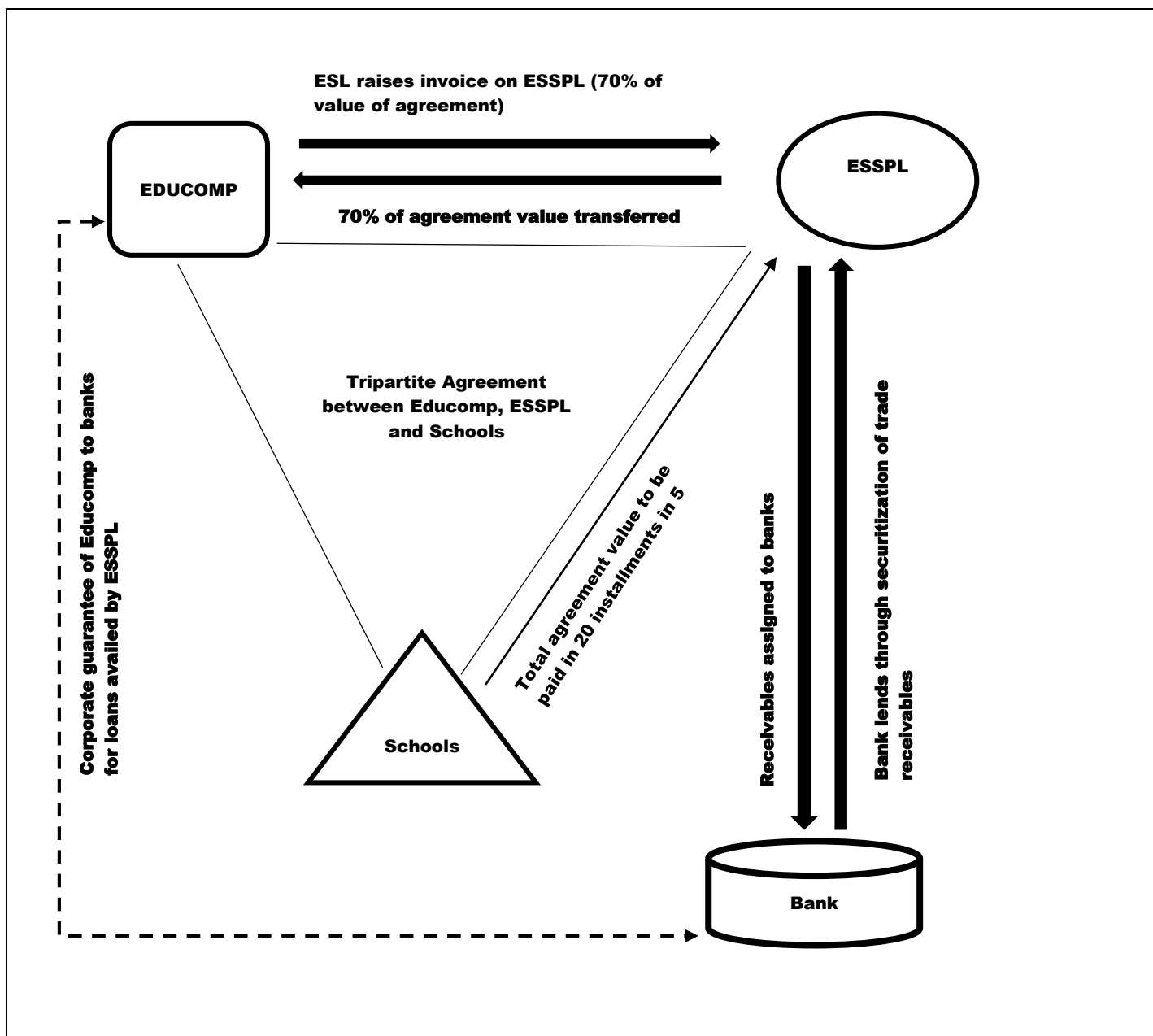
S. No.	Date	Event	Source
1.	October 12, 2009 (board resolution passed)	20,00,000 8% cumulative redeemable optionally convertible preference shares of Rs. 100 were issued by ESSPL to ESL, which resulted in the infusion of capital of Rs. 20,000,000.	Balance Sheet of ESSPL for FY 2009-10 as available on the MCA website.
2.	December 23, 2009 (special resolution passed by ESL)	Transfer of Smart Class contracts to ESSPL.	Reply of Noticees 2 and 3
3.	FY 2009-10	Secured term loan of Rs. 414 crore obtained from banks.	Balance Sheet of ESSPL for FY 2009-10 as available on the MCA website.
4.	FY 2009-10	Unsecured term loan of Rs. 250 crore obtained from banks.	Balance Sheet of ESSPL for FY 2009-10 as available on the MCA website.
5.	March 18, 2010 (Special resolution passed by ESL)	Corporate guarantee given by ESL in favour of ESSPL for securing credit facilities in respect of secured term loan and unsecured loan granted to ESSPL for up to an amount of Rs. 1550 crore.	Reply of Noticees 2 and 3 and Balance Sheet of ESSPL for FY 2009-10 as available on the MCA website.

5.21.It is noted from the SCN that in FY 2009-10, ESL decided to change its business model from BOOT to outright sale for its Smart Class business segment. As a consequence of that on December 23, 2009, ESL passed a resolution to sell 'Smart Class' contracts to ESSPL. ESL entered into a business transfer agreement with ESSPL, whereby the existing contracts on BOOT basis were transferred to ESSPL. It is noted that the transfer of Smart Class contracts to ESSPL, was approved by the shareholders of ESL u/s 293(1)(a) of the 1956 Act vide a special resolution dated December 23, 2009. From a perusal of the website of BSE, it is seen that the Notes to the Unaudited Financial Results for the quarter ending December 2009 make a mention of the transfer of the BOOT business. The said part is reproduced hereunder: *"5. Pursuant to Shareholder's Approval dated December 23, 2009 through Postal Ballot, Company has transferred 818 existing schools signed under BOOT business to Edu Smart Services Pvt Ltd. The Complete transfer of BOOT business shall be effected by March 31, 2010."* Similarly, in respect of the quarter ending March 2010, the Notes to Standalone Unaudited Financial Results for the quarter ending March 2010 mention the following: *" 4. In Quarter 4 ending on March 31, 2010, Company has transferred 1,323 existing schools signed under BOOT business to EduSmart Services Pvt. Ltd. Company has transferred all the existing schools under BOOT business till March 31, 2010, to EduSmart Services Pvt. Ltd."*

5.22.It is noted from the Balance Sheet of ESSPL for FY 2009-10 that the said Smart Class contracts were purchased by ESSPL for Rs. 1234 crore. So, the management of such BOOT contracts fell on ESSPL. At this point ESSPL, which had only been incorporated two months prior, had acquired a business worth Rs. 1234 crore on a paid-up equity share capital of Rs. 1,00,000 only. Fascinatingly, in the same financial year, on such a tiny capital base ESSPL was able to obtain secured/unsecured term loans from banks. This was made possible due to the corporate guarantee issued by ESL to ESSPL. A ramp-up of business of such scale would be unimaginable on a stand-alone basis without support.

5.23. Additionally, since ESL had moved to an outright sale model, this outright sale model was executed through ESSPL. As part of the said scheme, a tripartite agreement amongst ESL, ESSPL and the school availing the services was executed. It is further noted that the agreement value was usually payable by the school in twenty quarterly instalments spread over sixty months or five years. The payment to ESSPL had three components: a) amount payable towards hardware; b) amount payable for consideration for content licenses; and c) amount payable for consideration for providing support services. Further, it is noted that Educomp would raise invoices, which was about 70% of the total agreement value in respect of the hardware and the content, which would be paid by ESSPL. ESSPL would then keep collecting the quarterly installments from the third parties (the schools).

5.24. The *modus operandi* seems quite evident now. ESSPL, consequent to ESL's move to shift from BOOT model to outright sale model, was executing these five-year contracts for providing services to the schools through a tripartite agreement. The value of the agreement was to be paid to ESSPL in quarterly installments spread across sixty months. This created receivables on the books of ESSPL. ESSPL on its part pledged the receivables with banks and raised loans, the guarantee for which was given by ESL as pointed out above. ESSPL would thereafter transfer 70% of the tripartite agreement value to ESL on raising of invoices by the latter. Essentially, the change in business model by ESL enabled it to show a clean Balance Sheet on the strength of the Bank Guarantee that it gave to the lender of ESSPL. A pictorial representation of the said *modus operandi* is provided hereunder:



5.25. Because of the receipt of 70% of funds in lump sum at the start of the tenure of the agreement, ESL was able to book 70% of the agreement value upfront, which would have otherwise only been realised through quarterly installments spread across five years, thereby inflating ESL's revenue and profits. This also served another purpose: the risk of non-payment by the school who were availing the service was transferred from ESL to ESSPL.

5.26. This financial arrangement, as a result of the tripartite agreement, had a clear impact on the financials of ESL. A comparison of the profit position of ESL during FYs 2009-10, 2010-11, 2011-12 and 2012-13 on one hand and its profit position in subsequent years is revealing.

Table – 10

(Figures in Rs. crore)

Year	Mar 2010	Mar 2011	Mar 2012	Mar 2013		Mar 2014	Mar 2015	Mar 2016	Mar 2017
Sales	1,039	1,351	1,491	1,211		635	518	495	292
Expenses	643	794	1,072	1,055		661	566	713	360
Operating Profit	396	557	419	156		-26	-48	-218	-67
Net Profit	282	342	137	-143		-386	-1,700	-626	-782

5.27. As may be noted from the above, ESL had an operating profit during the financial years when ESSPL had not been shown as a subsidiary. However, the moment ESSPL was shown as a subsidiary, the profitability of ESL took a beating.

5.28. Further, it is noted from the financials of ESL that there was a steep rise in the provisions on trade receivable and write-offs subsequent to FY 2012-13. The details of the provisions on doubtful trade receivables are provided hereunder:

Table – 11

(Figures in Rs crore)

S. No.	Particulars	2012-13	2013-14	2014-15
1.	Sales	1,211	635	518
2.	Provisions on doubtful trade receivable and bad debts written off	27	118	650
3.	Provisions as a % of sales	2%	19%	125%

5.29. The sharp rise in provisions can be attributed to ESL acknowledging that ESSPL was a subsidiary of ESL and disclosing it in its books consequent to the 2013 Act coming into effect (April 01, 2014), and also because of the fact that the lenders of ESL had taken ESL to CDR.

5.30. Additionally, in Table – 3 of the SCN many instances of trade receivables in respect of the sale of Smart Class products that were written off have been brought out. It would be relevant to provide herewith some such instances:

a) Sri Vasavi Matriculation Hr. Sec School ("**Vasavi School**") – A tripartite agreement was executed amongst ESL, Vasavi School and ESSPL on May 04, 2011. The agreement amount was Rs. 22.20 lakh payable to ESSPL in twenty installments. The account was closed on March 12, 2015 after the receipt of Rs. 3 lakh from Vasavi School and accounting for Rs. 11.17 lakh as pre-closure discount.

b) Venus Matriculation School ("**Venus**") – A tripartite agreement was executed amongst ESL, Venus and ESSPL on September 15, 2011. The agreement amount was Rs. 53 lakh payable to ESSPL in twenty installments. The account was closed on March 18, 2015 after the receipt of Rs. 13 lakh from Venus and accounting for Rs. 20.13 lakh as pre-closure discount.

5.31. As already stated there was a steep increase in the provisions on doubtful trade receivable and write-offs subsequent to FY 2012-13. A reasonable inference that could be drawn from the same is that inflated revenues were reported by ESL during FYs 2009-10, 2010-11, 2011-12 and 2012-13. During this period, ESL would receive 70% of the amount of the tripartite agreement between itself, ESSPL and the customer (school).

5.32. So, there appears to be a clear objective for ESL to shift its Smart Class business segment to ESSPL which was to inflate the revenues, and transfer the risk of non-payment onto the books of ESSPL.

5.33.It is also noted from Table – 9 that within a little over two months of its incorporation in July, ESSPL issued preference shares to the tune of Rs. 20 crore to ESL. This provided the necessary capital to the company, whose promoters had only been able to bring in a capital of Rs.1,00,000. And as brought out in paragraph 5.24, loans were raised by ESSPL providing trade receivables as security, which were a consequence of the transfer of Smart Class business segment from ESL to ESSPL. Additionally, it is emphasised that for the sanction of the bank loans to ESSPL, corporate guarantee was provided by ESL.

5.34.It is evidently clear that the initial capital infusion into ESSPL of Rs. 20 crore was made by ESL through issue of convertible preference shares. Indirectly, ESL's corporate guarantee served as the basis for banks to extend loans to ESSPL. It would be nigh impossible for a newly minted entity (ESSPL) to raise such large loans without ESL's backing.

5.35.It has not only been alleged that the capital of ESSPL was inextricably tied to ESL but also the personnel responsible for the management and shareholding of ESSPL. In this regard, it would be relevant to chart out the relationship of the directors/shareholders of ESSPL with ESL, as brought out in the SCN:

- a. Abhinav Dhar, who was an initial subscriber of ESSPL and also authorised to sign and issue the share certificate of ESSPL, was part of the KMP (Director of Business and Operation and In-charge of School Learning Solutions Section) of Educomp;
- b. Ashok Mehta used to be KMP and senior employee of Educomp prior to his becoming the director in ESSPL; and
- c. Pramod Thotai, who was the director and shareholder of ESSPL, was director in several related companies of Educomp.

5.36.In this regard, Noticees 2 and 3 have submitted that –

- a. Abhinav Dhar was a shareholder in ESSPL for a short period of approximately two months, till September 16, 2009, and was authorised only

once during the initial days of incorporation of ESSPL to sign the share certificates;

- b. Ashok Mehta at the time of holding of position of director in ESSPL had no association with Educomp or Noticees 2 and 3, and he was appointed as the Director of ESSPL on July 2, 2009/December 22, 2009; and
- c. Pramod Thatoi left his employment with Educomp on June 30, 2009 and only joined ESSPL as a shareholder and a director on July 02, 2009.

5.37. Additionally, it has been submitted by Noticees 2 and 3 that Abhinav Dhar and Ashok Mehta were not KMPs but SMPs.

5.38. It has already been brought out that Abhinav Dhar was the initial shareholder of ESSPL at the time of its incorporation on July 02, 2009. It is noted from the Red Herring Prospectus dated December 5, 2005 filed by ESL with the Registrar of Companies (“**RHP**”) that Abhinav Dhar held the designation of “Sr. Vice President – K12” in ESL and was stated to be part of the KMP of ESL. It is also noted from the RHP that he joined ESL on November 01, 2002. The RHP also contains a short outline of his professional career, which is reproduced hereunder:

“Mr. Abhinav Dhar – Sr. Vice President – K12, formerly Headed NIITs K12 business and Shell’s IT enabled k-12 education venture in India. He has a vast experience in the domain of K-12 technology education in India and has a deep understanding of the K-12 education market landscape and its key motivational drivers. He has led several initiatives in the area of building mass level IT literacy and Technology enabled education in Government and private Schools in India. His gross salary is Rs 12 lacs.”

5.39. It is noted that Abhinav Dhar was not only employed with ESL but was also a director in various companies disclosed by ESL as its subsidiaries. The list of subsidiary companies in which Abhinav Dhar was a director (as accessed on January 30, 2020) is as under:

Table – 12

S. No.	Company	Designation	Original date of appointment	Date of cessation
1.	Eurokids International Private Limited	Director	21/08/2009	09/01/2010
2.	Educomp Infrastructure Services Private Limited	Director	31/12/2013	-
3.	Educomp Infrastructure and School Management Limited	Director	18/10/2012	13/02/2013
4.	ELHPL Private Limited	Director	28/12/2009	-
5.	A P Eduvision Private Limited	Director	12/11/2010	-
6.	Educomp Learning Private Limited	Director	29/01/2010	-
7.	Educomp Investment Management Limited	Director	29/07/2010	-
8.	Koshinet Ventures Private Limited	Director	22/05/2017	-
9.	Little Millennium Education Private Limited	Director	26/10/2012	15/02/2014
10.	Educomp School Management Limited	Director	12/04/2010	-
11.	Educomp Online Supplemental Service Limited	Director	17/03/2010	22/03/2014
12.	Knowledge Vistas Limited	Director	30/12/2013	30/04/2019

5.40. Similarly, it has already been brought out that Ashok Mehta was a director of ESSPL from its inception and shareholding held by Abhinav Dhar in ESSPL was transferred to Ashok Mehta in September 2009. It is noted from the RHP filed by ESL that Ashok Mehta held the designation of “Vice President operations” in ESL and was stated to be part of the KMP of ESL. It is also noted from the RHP that he had been granted certain shares of ESL on April 05, 2001. So, he was associated with ESL since, at least, April 05, 2001. The RHP also contains a short outline of his professional career, which is reproduced hereunder:

“Mr. Ashok Mehta, Vice President operations, PGDCA (Post Graduate Diploma in Computer Applications). He has over 14 years of experience. He is the administrative and operations head of the company’s operations in South India. He also manages two prestigious projects that the company has with Govt. of Karnataka. His gross salary is Rs 8.28 lacs.”

5.41. Additionally, it is noted that Ashok Mehta was not only employed with ESL but also a director in various companies disclosed by ESL as its subsidiaries. The list of subsidiary companies in which Ashok Mehta was a director (as accessed on January 30, 2020) is as under:

Table – 13

S. No.	Company	Designation	Original date of appointment	Date of cessation
1.	Rosebud Buildwell Private Limited	Director	10/12/2010	30/08/2018
2.	Wheatstone Productions Pvt. Limited	Director	18/01/2003	17/08/2017
3.	ELHPL Private Limited	Director	22/03/2014	17/08/2017
4.	Educomp Software Limited	Director	24/09/2014	17/08/2017

5.	Gyankunj Education Private Limited	Director	31/03/2015	30/08/2018
6.	Kaisons Housing Corporation Limited	Director	21/02/2013	31/08/2018
7.	Ebix Educomp Learning Private Limited	Director	13/07/2016	20/07/2017
8.	Attain Education Private Limited	Director	12/08/2014	30/08/2016
9.	Future Skill Solutions Private Limited	Director	10/08/2015	-
10.	K B Educational Services Private Limited	Director	20/03/2015	10/06/2016
11.	Phygitech Learning Solutions Private Limited	Director	11/09/2018	-

5.42. Lastly, it has already been brought out that Pramod Thatoi was an initial shareholder of ESSPL at the time of its incorporation on July 02, 2009 and also the director. It is noted from the reply received from ESL (through the RP) that Pramod Thatoi was employed as a General Manager (Finance and Accounts) with ESL. The period of the said employment was from September 12, 2013 to July 31, 2019. It is also noted that Pramod Thatoi was not only employed with ESL but also a director in various companies disclosed by ESL as its subsidiaries. The list of subsidiary companies in which Pramod Thatoi was a director (as accessed on May 19, 2023) is as under:

Table – 14

S. No.	Company	Designation	Original date of appointment	Date of cessation
1.	A P Eduvision Private Limited #	Director	23 Mar 2006	12 August 2009
2.	Growzone Infrastructure Private Limited	Director	31 Mar 2015	-
3.	Virtual Buildtech Private Limited	Director	31 Mar 2015	-
4.	Newzone Infrastructure Private Limited	Director	30 Mar 2015	-
5.	Hidream Constructions Private Limited	Director	30 Mar 2015	-
6.	Boston Realtech Private Limited	Director	30 Mar 2015	-
7.	Grider Infratech Private Limited	Director	31 Mar 2015	-
8.	Educomp School Management Limited	Director	30 Mar 2015	-

Subsidiary of joint venture of subsidiary

5.43. There is a clear pattern evident whereby people who were employed/associated with ESL were made directors in subsidiary companies. It would appear that such an arrangement worked perfectly well for two reasons: a) for the employees, since that allowed them to draw remuneration from multiple sources and b) for ESL, since

having employees with long years of association with it as directors on the boards of its subsidiaries, allowed it to impose its will without any hindrance.

5.44. In this regard, it has been stated in the SCN that the documents filed with MCA during FY 2009-10, which were digitally signed by Pramod Thatoi, the digital certificate showed that his email address was mohit.maheshwari@educomp.com, which was also the email of the compliance officer of Educomp. In this regard, it has been stated by Noticees 2 and 3 that it was a standard practice at ESL to generate and register digital signatures of every employee through the email address of the Compliance Officer. So, the DSC of Pramod Thatoi showed the email address of Mohit Maheshwari i.e., mohit.maheshwari@educomp.com. The said DSC had been made on April 21, 2009, during the term of his employment with ESL. The said DSC had a validity of two years i.e. up to April 21, 2011. As submitted by Noticees 2 and 3, Pramod Thatoi became a director of ESSPL on July 2, 2009/October 01, 2009 and was using his old DSC. After the expiry of the validity of the DSC, Pramod Thatoi on April 14, 2011 renewed his DSC and linked it with his ESSPL email ID viz. pramod.thatoi@edusmartservices.com and the same was registered with MCA. From the annexures supplied, it appears that the email ID linked to Pramod Thatoi's DSC was changed to pramod.thatoi@edusmartservices.com. However, this long use of an email ID that belonged to an official at ESL, only buttresses the inference that the directors of ESSPL were acting as an extended arm of ESL.

5.45. Noticees 2 and 3 have placed reliance on *DLF Qutub Enclave V. State of Haryana [(2003) 5 SCC 622]* to contend that that the employees or ex-employees being associated with ESSPL, can only create prejudice and cannot be the basis of violation of law, more so, in the absence of an express provision. The said Noticees have also placed reliance on the Hon'ble SAT's order in *DLF Limited V. Securities and Exchange Board of India dated March 13, 2015 (Appeal No. 331 of 2014)* to contend that the mere fact that the Directors on the Board of the three companies who might have been the employees of company or its wholly owned subsidiaries would not lead to an inference of decisive control over the composition of the Board of such companies by such other company.

5.46. The fact of the long association of the directors of ESSPL as employees in ESL and also as directors in the subsidiaries of ESL is one of the factors in the examination as to whether ESSPL was a subsidiary of ESL. It is not the only factor, as has been demonstrated in the preceding paragraphs. Therefore, the precedent cited by Noticees 2 and 3 would not be of much assistance. Additionally, in line with the principle enunciated by the Hon'ble Supreme Court in *DLF Qutub Enclave*, the long association of the employees or ex-employees of ESL with ESSPL, creates a clear prejudice, with respect to the relationship between ESL and ESSPL.

5.47. So from the preceding paragraphs, the facts that clearly emerge are: a) ESSPL's primary source of capital and guarantees to secure loans from banks was ESL b) ESSPL's promoters and directors were either employees or ex-employees of ESL and had a long association with ESL, and were appointed directors in many of ESL's subsidiaries; c) ESSPL's entire business was dependent on ESL, and in fact it had a single customer and d) a specific purpose was being served by ESSPL's incorporation and the subsequent transfer of the Smart Class business to it.

5.48. ESSPL was, thus, nothing but a creation of ESL, and the latter exercised control through the capital it had infused and business it provided to ESSPL. ESSPL was ESL in another name, and for good measure had its former experienced employees working as promoters and directors who would run the business in much the same fashion as ESL would have liked.

5.49. The Noticees have relied on the cases of *M Velayudhan Vs. Registrar of Companies* and *Oriental Industrial Investment Corporation Vs. Union of India [1981J 51 Comp Cas 487 (Del)]* to contend that "controls the composition of board of directors" should be read in accordance with Sub-section (2) of Section 4 of the Companies Act and that the Sub-section conceived of control only if the Company which claimed control could 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. It would be relevant to narrate briefly the facts in the said matter.

5.50. The facts of the case are that Company X entered into an agreement with Company Y as a consequence of which Company X advanced money to Company Y. The said agreement provided that Company X had the power to nominate the majority of the directors on the board of Company Y, and such nominee directors would be treated in all respects as directors of Company Y and co-opted into its board. Additionally, the agreement provided that Company X had the power to convert the loans granted into shares. Consequently, Company X nominated directors to the board of Company Y and they were immediately co-opted. The Registrar of Companies launched proceedings against Company X for violation of Section 372, for exceeding the limits of permissible investment. Company X argued that since it was the holding company of Company Y, it was exempted from the application of Section 372 and was not liable for any penalties. The Hon'ble HC of Kerala held that Company X qualified as a holding company of Company Y within the meaning of Sub-section 1(a) and Sub-section 2. The Hon'ble HC acknowledged that there was possibility of a temporary controlling power and therefore temporary relationship of holding company and subsidiary company, since the 1956 Act nowhere prescribed the duration of the relationship. It is not clear as to how the said judgement would be of any assistance to the case of Noticees 2 and 3.

5.51. There is no disagreement with the principle enunciated in the precedents cited by Noticees 2 and 3 that the supposed holding company should be in a position to exercise independent discretion without the concurrence or consent of another person in affecting the board composition of the supposed subsidiary company. However, if there is a pre-existing arrangement that nullifies the power of giving consent of a person who would have otherwise been able to grant such concurrence, then in such a case the exercise of discretion pursuant to an arrangement becomes independent and not reliant on the concurrence or consent of any other person. This has been acknowledged and demonstrated by the Hon'ble High Court of Kerala in the above-mentioned case. The present matter fits into the same mould. The only difference being that the arrangement between ESL and the promoters/shareholders has not been rendered in writing or crystallised in a document. However, as the

Indian Contract Act sanctifies, an agreement need not necessarily be a written one. The arrangement that existed between ESL and the promoters /shareholders of ESSPL is starkly evident from the present facts where the only contribution of the promoters has been Rs. 1,00,000, ESL was the singular provider of capital, business and guarantees, and the promoters/shareholders were long standing employees of ESL. Such an arrangement, which demonstrates the overwhelming weight of the power of ESL in the affairs of ESSPL, erodes any formal notion of independence that could be attributed to the shareholders/promoters of ESSPL. Nothing on record suggests that ESSPL or its shareholders/promoters acted in any manner that was at variance to the interests of ESL. The shareholders/promoters of ESSPL being the proxies for ESL had no distinct agency, and, as such, had no power to give their consent or concurrence to ESL but only to carry out instructions emanating from ESL, as the facts brought out in the preceding paragraphs have clearly demonstrated.

5.52. The above finding that the shareholders of ESSPL did not have a view distinct from that of ESL is also demonstrated from the CDR package. The CDR package with respect to ESL is contained in Annexure-3 to the SCN. The said Annexure is a letter dated February 28, 2014 addressed by the CDR Cell (formed pursuant to the Corporate Debt Restructuring System put in place by the RBI) to DGM, State Bank of Patiala, which was the Lead Banker. In the said letter, the CDR Cell had communicated the final restructuring package in respect of ESL, as approved by the CDR Empowered Group. The CDR package, as mentioned in the said letter, at some places makes reference to ESSPL. In this regard, the references to ESSPL in the restructuring package are reproduced hereunder for convenience:

- a. Page 8 – *“The company proposes to discontinue its existing business model of selling “Smartclass” through Edu Smart Services Private Limited (ESSPL). Under the new business model, from FY 2014 onwards, the company would sell the “Smartclass” directly to schools where they would recognize revenue over a period of 3 years for a contract executed in the first year, hence, company’s new debtors (within existing DP norms) will come down substantially.”* (emphasis supplied)

- b. Page 12 – *“It may be mentioned that, in case the lenders of ESSPL wants to become part of ESL restructuring scheme through any alternative mechanism, the same would be considered by MI/MC based on specific request and looking at its implication on the overall scheme. It may be mentioned that as the business and operations of ESSPL & ESL are intricately linked, the company on the behest of lenders, has agreed to chart out a plan for the future merger of both the companies within 2 years subject to necessary regulatory and other approvals.”* (emphasis supplied)
- c. Page 13 – *“The company proposes to change its business model from 1st April 2013. As per the new business model, the company would sell the smart classes directly to the end users i.e. schools instead of selling it through third party Edu Smart Services Private Limited.”*

5.53.From the relevant extracts of the letter addressed by the CDR Cell, as reproduced above, there is a clear undertaking provided by ESL to chart out a merger with ESSPL within two years. Obviously, a merger cannot go through unless the other party was agreeable to it. It is evident from the language used that the merger was solely based on the acceptance of the said proposal by ESL, showing the hold that ESL had over ESSPL.

5.54.Additionally, Noticees 2 and 3 have provided the minutes of the Joint Lenders Meeting held on November 30. 2013 as an annexure to their reply dated October 04, 2021. It is noted that the said meeting was not only attended by the lenders but also had Shantanu Prakash as an attendee. The minutes contain the main contours of the restructuring package in respect of ESL. The minutes under the head “Package Highlights” note *“ESL will change its present business model. As per the existing model, the company used to sell the Smartclass products to its subsidiary, Edusmart Services Pvt Ltd (ESSPL) and recognize a major portion of the revenue upfront with the remaining amount amortized over a period of 5 years.”* (emphasis supplied)

5.55. At the said meeting the lenders of ESSPL were also present, who met in the post-lunch session. The discussion centered on whether the ESSPL lenders wished to join the ESL lenders on parity basis and be a part of the restructuring package of ESL. The chair of the meeting requested the ESSPL lenders to provide their confirmation on the said question at the earliest. It would, however, be instructive to place hereunder some of the views expressed by some of the lenders of ESSPL at the said meeting. The same are as under:

“ > IDBI Bank

- *Prima facie agreeable to support the Company and work towards a comprehensive solution along with ESL Lenders, after due consideration of all issues involved including security cover, legalities of the process etc.*
- *They also suggested that a roadmap for merger of ESL and ESSPL say over the next 2 years should be planned since due to change in business model of ESL, there is winding down of business for ESSPL.*
- *They agreed to revert in next few days*

> J&K Bank

- *Prima facie agreeable to support the Company and work towards a comprehensive solution along with ESL Lenders. However, they would confirm their exact status in the next few days.*
- *They also suggested that ESL and ESSPL should be amalgamated at the earliest, due to the change in business model of ESL and lack of opportunities for ESSPL.*

5.56. The bankers were acutely aware that ESSPL was essentially an arm of ESL for executing the Smart Class line of business. They were also aware that any change in the business model i.e., Smart Class business segment being handled by ESL directly meant that ESSPL would have no business to carry out and as such a merger was essential to safeguard their interests. So, even the bankers had all along considered ESSPL as a subsidiary unit of ESL that was used by ESL to execute the Smart Class business segment.

5.57. Thus, I find that ESL during FYs 2009-10, 2010-11, 2011-12 and 2012-13 exercised overwhelming control over the policy and affairs of ESSPL by virtue of being the singular provider of capital, business and guarantees, and the promoters/shareholders of ESSPL being long standing employees of ESL. This ensured that ESL had the discretion to change the majority of directors of ESSPL without the consent or concurrence of any person. Accordingly, during the said financial years ESSPL was a subsidiary of ESL. It is clear without any doubt that this arrangement between ESL and ESSPL helped the former in recognising a major portion of its revenue upfront thereby misleading investors.

5.58. In view of the same, I find that ESL failed to disclose ESSL as its subsidiary for FYs 2009-10, 2010-11, 2011-12 and 2012-13.

Issue II – Whether ESL failed to disclose the transactions with ESSL as related party transactions and failed to disclose financial details of its subsidiary in its consolidated accounts and financial statements in the Annual Reports for FYs 2009-10, 2010-11, 2011-12 and 2012-13?

5.59. It has been alleged in the SCN that ESL had failed to disclose the details of its subsidiary (ESSPL) in its consolidated accounts and had not given a true and fair picture of its financial position thereby violating clause 49 (IV) (A) and clause 49 (V) (a) of the Listing Agreement. Additionally, it has been alleged in the SCN that there were significant transactions between ESSPL and ESL which were required to be reported as “Related party transactions”, however the same were shown as third party transactions in the Annual Reports of ESL for FYs 2009-10, 2010-11, 2011-12 and 2012-13. Accordingly, it has been alleged that Clause 32 of the Listing Agreement has been violated by ESL. The SCN further states, “*Educomp also failed 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.*”

5.60. With respect to the allegations made in the SCN, it would be relevant to reproduce in full Clause 32 of the Listing Agreement for the convenience of reference. The said provision reads,

“ 32. The issuer shall supply:

(i) Soft copies of full annual reports containing its Balance Sheet, Profit & Loss account and Directors’ Report to all those shareholder(s) who have registered their email address(es) for the purpose;

(ii) Hard copy of statement containing the salient features of all the documents, as prescribed in sub-clause (iv) of clause (b) of proviso to section 219 of the Companies Act, 1956 to those shareholder(s) who have not so registered;

(iii) Hard copies of full annual reports to those shareholders, who request for the same.

The issuer will also give cash flow statement along with the Balance Sheet and Profit and Loss Account. The Cash Flow Statement will be prepared in accordance with the Accounting Standard on Cash Flow Statement (AS-3) issued by the Institute of Chartered Accountants of India, and the Cash Flow Statement shall be presented only under the Indirect Method as given in AS-3. The statement shall be issued under the authority of the Board and shall be signed on behalf of the Board of Directors in the manner provided for the authentication of Balance Sheet and Profit and Loss Account in Section 215 of the Companies Act, 1956.

a. Consolidated Financial Statement:

- Companies shall be mandatory required to publish Consolidated Financial Statements in the annual report in addition to the individual financial statements.*
- Audit of Consolidated Financial Statements by the statutory auditors of the company and the filing of Consolidated Financial Statements audited by the statutory auditors of the company with the stock exchanges shall be mandatory.*

b. Related Party Disclosures :

- *Companies shall be required to make disclosures in compliance with the Accounting Standard on "Related Party Disclosures" in the annual reports.*

The Issuer agrees to make the following disclosure in the Annual Report:

- i) In case the shares are delisted, it shall disclose the fact of delisting, together with reasons thereof in its Directors Report*
- ii) In case the securities are suspended from trading, the Directors Report should explain the reason thereof*
- iii) The name and address of each stock exchange at which the issuer's securities are listed and also confirm that Annual Listing Fee has been paid to each of the exchange.*
- iv) The following disclosure requirements are prescribed for the listed companies in the annual accounts of the company.*

S.No	In the accounts of	Disclosures of amounts at the year end and the maximum amount of loans/ advances/ investments outstanding during the year.
1.	Parent	- Loans and advances in the nature of loans to subsidiaries by name and amount. - Loans and advances in the nature of loans to associates by name and amount - Loans and advances in the nature of loans where there is (i) no repayment schedule or repayment beyond seven years or (ii) no interest or interest below section 372A of Companies Act by name and amount. - Loans and advances in the nature of loans to firms/companies in which directors are interested by name and amount
2	Subsidiary	Same disclosures as applicable to the parent company in the accounts of subsidiary company.
3	Parent	Investments by the loanee in the shares of parent company and subsidiary company, when the company has made a loan or advance in the nature of loan.

Note: 1) For the purpose of the above disclosures the terms "parent" and "subsidiary" shall have the same meaning as defined in the Accounting Standard on Consolidated Financial Statement (AS21) issued by ICAI.

2) For the purpose of the above disclosures the terms 'Associate' and 'Related Party' shall have the same meaning as defined in the Accounting Standard on "Related Party Disclosures (AS 18)" issued by ICAI

3) For the purpose of above disclosures directors interest shall have the same meaning as given in Sec 299 of Companies Act.

The above disclosures shall be applicable to all listed companies except for listed banks.

If the company has changed its name suggesting any new line of business, it shall disclose the net sales or income, expenditure and net profit or loss after tax figures pertaining to the said new line of business separately in the financial results and shall continue to make such disclosures for the three years succeeding the date of change in name.

Provided that tax expense shall be allocated between the said new line of business and other business of the company in the ratio of the respective figures of net profit before tax, subject to any exemption, deduction or concession available under the tax laws.

Frequent change of names by listed companies

All listed companies which decide to change their names shall be required to comply with the following conditions:

1. A time period of at least 1 year should have elapsed from the last name change.
2. At least 50% of its total revenue in the preceding 1 year period should have been accounted for by the new activity suggested by the new name.

Or

The amount invested in the new activity/project (Fixed Assets + Advances + Works in Progress) is atleast 50% of the assets of the company. The 'Advances' shall include only those extended to contractors and suppliers towards execution of project, specific to new activity as reflected in the new name.

To implement the compliance of the aforesaid provision, the company shall submit auditor's certificate to the exchange.

The new name along with the old name shall be disclosed through the web sites of the respective stock exchange/s where the company is listed for a continuous period of one year, from the date of the last name change.”

5.61. As is seen from the above provision, for the purpose of the above disclosures the terms “parent” and “subsidiary” shall have the same meaning as defined in the Accounting Standard on Consolidated Financial Statement (AS21) issued by ICAI.

5.62. In this regard, the relevant part of AS21 is provided hereunder:

“ For the purpose of this Standard, the following terms are used with the meanings specified:

5.1 Control:

(a) the ownership, directly or indirectly through subsidiary(ies), of more than one-half of the voting power of an enterprise; or

(b) control of the composition of the board of directors in the case of a company or of the composition of the corresponding governing body in case of any other enterprise so as to obtain economic benefits from its activities.

5.2 A subsidiary is an enterprise that is controlled by another enterprise (known as the parent).

5.3 A parent is an enterprise that has one or more subsidiaries.

5.4 A group is a parent and all its subsidiaries.

5.5 Consolidated financial statements are the financial statements of a group presented as those of a single enterprise.”

5.63. Clause 32 of the Listing Agreement requires a 'Parent' to present consolidated financial statements with all its subsidiaries. So, as per AS 21, a subsidiary is an enterprise that is controlled by a parent. Further, from a reading of control as defined in AS 21, it is gathered that control exists where an enterprise –

- a. has ownership, directly or indirectly through subsidiary(ies), of more than one-half of the voting power of another enterprise; or
- b. control of the composition of the board of directors in the case of a company so as to obtain economic benefits from its activities.

5.64. It has already been elaborated in the preceding paragraphs that ESL had control over the composition of the board of directors as defined in Section 4(2) of the 1956 Act. In view of the same, condition (b) as brought out above is squarely applicable. Thus, there was Parent-Subsidiary relationship between ESL and ESSPL as per AS 21.

5.65. Accordingly, there was an obligation on the Parent i.e., ESL to present consolidated financial statements with all its subsidiaries which should have included ESSPL. However, the same was not done. I, therefore, find that ESL failed to disclose financial details of its subsidiary, ESSPL in its consolidated accounts and financial statements for FYs 2009-10, 2010-11, 2011-12 and 2012-13.

5.66. As already stated, it has also been alleged in the SCN that there were significant transactions between ESSPL and ESL which were required to be reported as "Related party transactions", however the same were not properly reflected in the Annual Reports/financial statements of ESL for FYs 2009-10, 2010-11, 2011-12 and 2012-13.

5.67. In this regard, reference is made to paragraph 2 (I) (I) of the SCN. The said paragraph *inter alia* notes that –

- a. Educomp in its Annual Report for FY 2009-10 disclosed that School Learning Solutions which comprised Smart Class & Edu reach Business constituting 67.84% of the revenue and 48.63% of the profit during FY 2008-

09, was transferred to a third party vendor through a Business Transfer Agreement.

- b. In FY 2009-10, Educomp received 20,00,000 8% Cumulative Redeemable Non-Convertible Preference shares of ESSPL. This subscription of preference shares by ESL was reported by ESL as investment in other companies in its Annual Reports. Subsequently, the subscription of the preference shares of ESSPL by ESL increased to 45,00,000 8% cumulative redeemable non-convertible preference shares of face value of Rs. 100 each (worth Forty Five Crore Rupees). This was reported in its Annual Report (FY 2010-11) as long term investment.

5.68. Further, as has been brought out, corporate guarantee was provided by ESL for the loans availed by ESSPL. This was reported as contingent liabilities arising from third parties in the Annual Report of ESL. The details of the same as provided in the SCN are tabulated hereunder:

Table – 15

Financial Year	Long term borrowing (net) of ESSPL (Rs. mn) as on March 31	Contingent liabilities from 3rd party in AR of ESL (Rs. mn) as on March 31	Asset reported in Balance Sheet of ESL (Rs. mn) as on March 31
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

5.69. In this regard, reference is made to Clause 32 of the Listing Agreement. As per the said clause, companies were required to make disclosures in the annual reports in compliance with the Accounting Standard on “Related Party Disclosures”.

5.70. AS 18 is the Accounting Standard concerning “Related Party Disclosures”. Some of the definitions as mentioned in the said Accounting Standard are relevant for the present examination, and as such the same are provided hereunder:

“10. For the purpose of this Standard, the following terms are used with the meanings specified:

10.1 Related party - parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions.

10.3 Control – (a) ownership, directly or indirectly, of more than one half of the voting power of an enterprise, or

(b) control of the composition of the board of directors in the case of a company or of the composition of the corresponding governing body in case of any other enterprise, or

(c) a substantial interest in voting power and the power to direct, by statute or agreement, the financial and/or operating policies of the enterprise.

10.4 Significant influence - participation in the financial and/or operating policy decisions of an enterprise, but not control of those policies.

10.10 Holding company - a company having one or more subsidiaries.

10.11 Subsidiary - a company:

(a) in which another company (the holding company) holds, either by itself and/or through one or more subsidiaries, more than one-half in nominal value of its equity share capital; or

(b) of which another company (the holding company) controls, either by itself and/or through one or more subsidiaries, the composition of its board of directors.”

5.71. It has already been brought out in the preceding paragraphs that ESL had the discretion to appoint/remove all or a majority of the directors of ESSPL without the consent or concurrence of any other person. The said facts, therefore, establish that ESL had ‘control’ over ESSPL as per the definition provided in 10.3 of AS18. Notwithstanding the above, it has already been brought out that ESL had provided the bulk of the capital in ESSPL and was the singular source of business demonstrating participation in the financial and/or operating policy decisions of ESSPL. So, ESL also had ‘substantial influence’ over ESSPL as defined in 10.4 of AS18. In view of the same, it is concluded that ESSPL was a ‘Related party’ of ESL as per the definition provided in 10.1 of AS 18.

5.72. In this respect, reference is made to 10.2 of AS 18 which defines a “related party transaction”. The same is reproduced hereunder:

“Related party transaction - a transfer of resources or obligations between related parties, regardless of whether or not a price is charged.”

It is evident that the transfer of Smart Class business from ESL to ESSPL through a business transfer agreement reflected a transfer of resources. Similarly, the issuance of preference shares to ESL by ESSPL and the transfer of consideration as a consequence of the same also amounts to transfer of resources. Further, the corporate guarantee given by ESL to banks for the loans taken by ESSPL amounts to an obligation undertaken on behalf of ESSPL. Thus, the transactions mentioned above clearly amount to Related Party Transactions.

5.73. It is further seen that AS 18 *inter alia* required that transactions between related parties should specifically disclose the name of the related party and nature of the related party relationship between the said parties in its financial statements. Additionally, AS 18 also required that the volume of the transactions in respect of related parties should be reflected in the financial statements either as an amount or as an appropriate proportion.

5.74. It is noted that the transactions between ESL and ESSPL were never reflected in the Annual Reports/Financial Statements by specific name and exact amount. As has already stated in the SCN, the sale of Smart School business to ESSPL was shown as transferred to “third party vendor” in the Annual Report. Similarly, the subscription of preference shares of ESSPL was shown as long term investment. Lastly, the corporate guarantee provided by ESL to the banks for the loans availed by ESSPL were disclosed as part of contingent liabilities from third parties in the Annual Report without specific mention of the amount or the entity on whose behalf such guarantee had been given. Thus, ESL has failed to disclose the related party transactions with ESSPL appropriately, as required under AS18.

5.75. Accordingly, I find that ESL for the FYs 2009-10, 2010-11, 2011-12 and 2012-13 by not disclosing related party transactions appropriately, as mandated in AS18 have violated the obligation contained in Clause 32 of the Listing Agreement.

5.76. Additionally, it has been alleged in the SCN that ESL has violated (IV) (A) of Clause 49 of the Listing Agreement read with Regulation 103 (2) of the LODR Regulations and SCRA, 1956.

5.77. In this regard, reference is made to (IV) (A) of Clause 49 of the Listing Agreement. The said provision is reproduced hereunder:

“ IV. Disclosures

(A) Basis of related party transactions

(i) A statement in summary form of transactions with related parties in the ordinary course of business shall be placed periodically before the audit committee.

(ii) Details of material individual transactions with related parties, which are not in the normal course of business, shall be placed before the audit committee.

(iii) Details of material individual transactions with related parties or others, which are not on an arm's length basis should be placed before the audit committee, together with Management's justification for the same.”

5.78. It is evident from the above that there was an obligation cast on ESL to present a summary of the transactions with related parties that were undertaken in ordinary

course of business, periodically before the Audit Committee. Also, transactions with related parties, which were not in the normal course of business, were required to be individually placed before the Audit Committee.

5.79. As has been brought out before, ESSPL was a related party of ESL, and ESL had many transactions with ESSPL which could not be considered as being “in the ordinary course of business”. However, there is nothing on record to suggest that the same were placed before the Audit Committee of ESL. It is reiterated that ESL had given corporate guarantee for the loans availed by ESSPL to the tune of at least Rs. 1550 crore. Transaction(s) of such high value was carried out without the Audit Committee being appropriately apprised as required under (IV) (A) of Clause 49 of the Listing Agreement.

5.80. Accordingly, I find that ESL violated (IV) (A) of Clause 49 of the Listing Agreement read with Regulation 103 (2) of the LODR Regulations and SCRA, 1956.

Issue III – Whether ESL had not shown a true and fair picture of its financial position for FYs 2009-10, 2010-11, 2011-12 and 2012-13, and whether the same could be considered as fraudulent under the SEBI Act and PFUTP Regulations?

5.81. It has been alleged in the SCN that ESL had not shown a true and fair picture of its financial position thereby violating Section 12 A (b) and (c) along with Regulation 3(b), 3(c), 3(d), 4(1), 4(2) (f), 4(2)(k) and 4(2)(r).

5.82. The SCN has based the above allegation principally on the following facts:

- a. ESL had shown ESSPL as a client instead of a subsidiary in its books. ESL booked revenue through the sales made by it to ESSPL.
- b. Since the sale of the Smart Class product post-2009 was being done through ESSPL, the real position of debt was not reflected in the books of ESL. This is because ESL got 70 % of the agreement value from ESSPL, while ESSPL had to account for the agreement value to be paid in quarterly installments spread across sixty months by the ultimate clients.

- c. ESL had given corporate guarantee to banks for the loans raised by ESSPL, so the revenue earned by ESL was effectively the loan taken by ESSPL from various banks. Also the loan liabilities of ESSPL were never shown in the balance sheet of ESL (as ESSPL was shown as a third party) which resulted in underreporting of the liability of ESL. On its own standing, ESSPL could have never raised loans. This was made possible through the corporate guarantee furnished by ESL.

5.83. However, before proceeding further it would be instructive to bring out the business arrangement between ESL and ESSPL. It is noted from the SCN that in FY 2009-10, ESL changed its business model from BOOT to outright sale for its Smart Class business segment. As a consequence of that ESL entered into a business transfer agreement with ESSPL, whereby the existing contracts on BOOT basis were transferred to ESSPL. Subsequently, since ESL had moved to an outright sale model, there used to be a tripartite agreement amongst ESL, ESSPL and the school availing the services. It is further noted that the agreement value (between ESSPL and the School) was usually payable in twenty quarterly installments in sixty months or five years. The agreements had three components: a) amount payable towards hardware; b) amount payable for consideration for content licenses; and c) amount payable for consideration for providing support services. Further, it is noted that ESL would raise invoices, amounting to about 70% of the total agreement value in respect of the hardware and the content.

5.84. As regards the allegations made, it has already been brought out that as per the prevalent law, ESSPL was a subsidiary of ESL. Also, it has been brought out that in terms of Clause 32 of the Listing Agreement there was a prevailing obligation on ESL to consolidate its financials with ESSPL and to show its transactions with ESSPL as a Related Party Transactions.

5.85. These were clear obligations that were not carried out by ESL. In doing so, ESL's books of account/financials did not reflect the true and fair picture of its financial health. The liabilities of ESL were building up outside its Balance Sheet where it had willingly provided its corporate guarantee.

- 5.86. It has been submitted by Noticees 2 and 3 that the actions taken by ESL were in accordance with the extant provisions of the 1956 Act. In this regard, it has been submitted that the transfer of Smart Class contracts to ESSPL, was approved by the shareholders of ESL u/s 293(1)(a) of the 1956 Act vide a special resolution dated December 23, 2009, and the same was passed by the majority of the shareholders. Also the transfer of the business to ESSPL was disclosed in the Standalone Unaudited Financial Results for the quarters ending December 2009 and March 2010 and the same was duly filed with the Stock Exchanges. Additionally, it has been submitted by Noticees 2 and 3 that the corporate guarantee given by ESL was pursuant to the passing of a special resolution under Section 372 A of the 1956 Act. It has also been submitted that ESSPL was specifically mentioned in the postal ballot sent to the shareholders by ESL before the said special resolution was passed.
- 5.87. ESL may have followed the defined processes provided in the 1956 Act for carrying out its corporate actions. However, there is no doubt that the then public shareholders of ESL were clearly unaware that ESSPL was a subsidiary of ESL. Similarly, the above fact not being in the public domain meant that the true intent of the hiving-off of the business may not have been known to investors who were investing in ESL, and had no access to information that would provide a true picture of its financial health and the level of its indebtedness. As subsequent events unfolded, the combined weight of the indebtedness of ESSPL and ESL resulted in ESL approaching banks for CDR and is now undergoing CIRP under the IBC.
- 5.88. In this regard, it would be relevant to observe the share-price history of ESL. It is noted from the available data that ESL's shares reached their peak price of Rs. 985.57 on NSE on October 01, 2009. However, the price of the scrip progressively declined and was trading at around Rs. 30 in April 2014, by which time ESSPL had been declared as a subsidiary of ESL. This downward trend continued in the subsequent years, and since June 2017 the share-price of ESL has been in single digits. The scrip is currently trading at Rs. 2 (as on May 29, 2023 on NSE). A graph of the share-price history of ESL on the NSE is provided hereunder:



5.89. The above graph is a clear reflection of the impact of inaccurate information regarding the financial health of ESL. In 2009, when ESL had not disclosed ESSPL as its subsidiary, ESL's share was trading at its peak. However, once ESSPL was declared as a subsidiary of ESL, and the financials of ESL and ESSPL were consolidated, the true picture of the financial health of ESL emerged. The common investors who had all this while invested in ESL's shares on the basis of misleading information, would have had no option but to dispose their shares at huge loss in light of the new information leading to great erosion of their wealth. The precipitous decline in the share-price of Educomp from its peak in 2009 clearly demonstrates the impact of the non-disclosure of ESSPL as its subsidiary on its share price.

5.90. Thus, ESL by not showing ESSPL as a subsidiary and deliberately misrepresenting its financial statements in contravention of the prevailing obligations, committed a fraud on investors in the securities market, and violated the provisions of Section 12A (b) and (c) of the SEBI Act, 1992. Further, Regulation 3(b), (c), (d) prohibit the use or employment of any manipulative or deceptive device. It has been brought out in the preceding paragraphs that there was fraudulent non-

disclosure of the status of ESSPL as a subsidiary of ESL, even though it was apparent that ESSPL was an arm of ESL. The consequence of this intentional non-disclosure of the relationship between ESSPL and ESL was that the financial statements of ESSPL were not consolidated with ESL. Also, transactions between ESL and ESSPL were not reflected as related party transactions but as third party transactions. The preparation and dissemination of financial statements by ESL without consolidation with ESSPL was a deceptive and manipulative device aimed at misleading the investors.

5.91. Additionally, ESL by engaging in deliberate misrepresentation of its financial statements indulged in fraudulent and unfair trade practice in securities, thereby violating Regulation 4(1) of the PFUTP Regulations. ESL, by publishing and reporting to the stock exchanges financial statements that did not reflect the true and fair health of the company, misrepresented the true state of ESL's financial condition thereby violating the provisions of Regulation 4(2)(f) of PFUTP Regulations. Also, since the financial statements reported to the stock exchanges did not reflect the true and fair picture of the company, it amounted to giving misleading and incorrect information of the affairs of ESL and induced sale/ purchase of its securities. This was a violation of Regulation 4(2)(r) of the PFUTP Regulations. Further, ESL being aware that the non-categorisation of ESSPL as a subsidiary was misleading, which was likely to influence the decision of investors dealing in securities, nevertheless disseminated the said information. This amounted to the violation of Regulation 4(2)(k) of the PFUTP Regulations.

5.92. Thus, it is evident that for FYs 2009-10, 2010-11, 2011-12 and 2012-13 ESL has violated Section 12 A (b) and (c) along with Regulation 3(b), 3(c), 3(d), 4(1), 4(2) (f), 4(2)(k) and 4(2)(r).

Issue IV – Whether Jagdish Prakash (Noticee 2) and Shantanu Prakash (Noticee 3) directors of ESL can be held liable for the actions of ESL?

5.93. The allegations against the company have already been brought out in the preceding paragraphs. It is trite law that a company works through its directors. In furtherance of the same Noticees 2 and 3 have been made parties to the SCN.

5.94. It is noted that during the relevant years viz., FYs 2009-10, 2010-11, 2011-12 and 2012-13 Jagdish Prakash and Shantanu Prakash were directors in ESL. In this regard, the SCN has alleged that Jagdish Prakash and Shantanu Prakash were in charge of the affairs of ESL and were responsible for the conduct of the business of the company.

5.95. In their defence, Noticees 2 and 3 have submitted that a) they were not experts in the field and were assisted by lawyers and accountants in carrying out their business; b) SEBI through an Adjudication Order had already let off the CFOs of ESL; and c) investigation had not drawn any adverse inference with respect to the conduct of the statutory auditors. As a corollary, it has been submitted by Noticees 2 and 3 that they also should not be held liable.

5.96. It is noted from the Annual Reports of ESL that Shantanu Prakash was categorised as a Promoter and Executive Director and functioned as the Chairman and Managing Director of ESL. Similarly, Jagdish Prakash, who is the father of Shantanu Prakash, was categorised as a Promoter and Executive Director of ESL in its Annual Reports.

5.97. In this regard, reference is made to the Section 2 (26) of the 1956 Act. As per the said provision, a Managing Director “*means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called :*

Provided that the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company

to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within substantial powers of management:

Provided further that a managing director of a company shall exercise his powers subject to the superintendence, control and direction of its Board of directors”.

So, a Managing Director as per the 1956 Act was a director entrusted with substantial powers of management, which would not have been otherwise exercisable by him had he not held the position of Managing Director. Additionally, Shantanu Prakash was the Chairman, which meant that he was also responsible for the general superintendence of the board of directors. This also entailed that he had additional powers, namely, casting vote in case there was a deadlock in the board with respect to a particular resolution. Thus, Shantanu Prakash had at his disposal enormous powers as well as complete and unrestricted access to information.

5.98. Similarly, Jagdish Prakash was categorised as a Promoter and Executive Director of ESL. So, being an Executive Director he was involved in the day-to-day affairs of ESL and had substantive powers for carrying out such functions. Additionally, he was also a promoter who held substantial shareholding in ESL. Accordingly, he had at his disposal substantial powers as well as access to information.

5.99. As brought out above, it has been contended by the said Noticees that they worked on the advice of various consultants. While that may be the case, it is quite evident that there would have been a clear information asymmetry between the said Noticees and the external advisors. Lawyers and accountants work and advise on the basis of information/documents provided to them by an agreement. It cannot be said that Noticees 2 and 3 were in the same position as the legal or accounting advisors who provided advice to them.

5.100. Additionally, the argument advanced that since the CFOs of ESL have not been held liable in the SEBI Adjudication Order, the same principle should be applicable to the present Noticees is without merit. The SEBI Adjudication Order has only looked at the actions of the CFOs in the facts of the case, and found that they could

not be held liable for imposition of penalty. The consideration in the said order was limited in nature. It is quite clear that Noticees 2 and 3 were placed in a far superior position that provided them far greater access to information than the CFOs and required them to guide and instruct their subordinate officers in the manner required. So, the comparison is inappropriate and unfair. The buck stops at the table of the Managing Director/Promoter.

5.101. In this respect, reliance is placed on the decision of the Hon'ble Supreme Court in the matter of *Official Liquidator v. PA. Tendolkar*, [(1973) 1 SCC 602], referred to in the case of *N. Narayanan Vs. Adjudicating Officer, SEBI*, [AIR 2013 SC 3191], wherein the Hon'ble Supreme Court held, “ *It is certainly a question of fact, to be determined upon the evidence in each case, whether a Director, alleged to be liable for misfeasance, had acted reasonably as well as honestly and with due diligence, so that he could not be held liable for conniving at fraud and misappropriation which takes place. A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially. If he does so he could be held liable for dereliction of duties undertaken by him and compelled to make good the losses incurred by the Company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the Company.*” (emphasis supplied)

5.102. Shantanu Prakash was the Chairman and Managing Director of ESL and Jagdish Prakash was an Executive Director. The very nature of the above positions would require deep knowledge, understanding and adequate involvement in the functioning of the company. In such a circumstance, they cannot feign ignorance and claim lack of knowledge. Also, both Shantanu Prakash and Jagdish Prakash were promoters of the company, and held substantial equity in ESL. Shifting blame to the senior management of ESL smacks of irresponsibility.

5.103. In this respect reference is also made to the Order dated March 07, 2022 of the Hon'ble SAT in the matter of *Soumen Ghosh and Another V. G. Mahalingam, WTM, SEBI in Appeal Nos. 171 and 172 of 2020* . The said Order was pursuant to an appeal filed against the Order dated January 03, 2020 passed by SEBI in respect of Soumen Ghosh and Kaushik Roy. The Order dated January 03, 2020 of SEBI had found that Soumen Ghosh and Kaushik Roy being directors were liable for the CISs being run by the company, Sumangal Industries Limited, without registration under the CIS Regulations. The Hon'ble SAT affirmed the Order of SEBI holding the directors liable for the CISs being run by Sumangal Industries Limited, on the ground that the directors were closely connected and associated with its management, and as such would be deemed liable for the conduct of the company. The Hon'ble SAT while coming to the above conclusion also relied upon the above-mentioned judgement of the Supreme Court in *Official Liquidator v. P.A.Tendolkar, [(1973)1SCC602]*. Accordingly, the principles as enunciated above squarely apply to Noticees 2 and 3 who were promoters and long-standing executive directors of ESL.

5.104. Therefore, on the basis of the information brought out above and documents available on record, I find that there is overwhelming evidence establishing that Shantanu Prakash and Jagdish Prakash, who were actively involved in the day-to-day activities of ESL, had full knowledge that ESSPL was a subsidiary of ESL because of the unique relationship existing between them, the nature of which has already been elaborated in the preceding paragraphs.

5.105. Thus, I find that for FYs 2009-10, 2010-11, 2011-12 and 2012-13 Shantanu Prakash and Jagdish Prakash have violated Section 12 A (b) and (c) of the SEBI Act along with Regulation 3(b), 3(c), 3(d), 4(1), 4(2) (f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations.

5.106. Additionally, it has also been alleged in the SCN that Shantanu Prakash had violated (V) (a) of Clause 49 of the Listing Agreement read with Regulation 103 (2) of the LODR Regulations and SCRA, 1956.

5.107. In this regard, reference is made to (V) (a) of Clause 49 of the Listing Agreement. The said provision is reproduced hereunder:

“ 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.”

5.108. It is evident from the above provision that a clear obligation was cast on the Managing Director of a company to certify to the board that he had reviewed the financial statements and the cash flow statement, and to the best of his knowledge and belief the statements presented a true and fair view of the company's affairs and were in compliance with existing accounting standards, applicable laws and regulations and did not contain any materially untrue statement or was misleading.

5.109. It has already been brought out that ESSPL was a subsidiary of ESL in line with the provisions of the 1956 Act. Since, ESSPL was a subsidiary there was an obligation on ESL to present consolidated financial statements with the inclusion of the financials of ESSPL. Additionally, there was also a requirement of showing the corporate guarantee given by ESL for the loan granted to ESSPL as a 'Related Party Transaction'.

5.110. However, the aforesaid facts never formed part of the financial statements of ESL. That being the case, the financial statements placed before the board of ESL

were inaccurate, materially untrue and did not reflect the true and fair picture of the affairs of ESL. Even though the said information did not find place in the financial statements of ESL, the same were certified by Shantanu Prakash that they were in compliance with the stipulations in (V) (a) of Clause 49 of the Listing Agreement. Accordingly, I find that the acts of Shantanu Prakash are in violation of the above-mentioned provision.

6. Conclusion –

- 6.1. The preceding paragraphs, have brought out in clear terms that there existed an evident umbilical cord between the 'Parent' – ESL and 'Subsidiary'– ESSPL. The new entity (ESSPL) had directors who were long term employees of ESL and Directors in other ESL group companies. There was also ample flow of capital and all the know-how of the business came from ESL. To this new entity without any track record to speak of, ESL transferred the Smart Class business. To infuse capital into ESSPL without owning equity, ESL subscribed to convertible preference shares.
- 6.2. This provided the necessary basis for banks to lend to ESSPL, which although had started with a miniscule capital of Rs. 1,00,000 of promoter contribution, had now crores of capital infused into it by ESL. Additionally, ESL provided corporate guarantee to the tune of Rs. 1550 crore for the loans received by ESSPL from third party lenders. If one posed the question: would ESSPL had got a penny had ESL not provided the corporate guarantee? The answer to that would be an unequivocal 'No'.
- 6.3. This arrangement with ESSPL had substantial benefit accruing to ESL as the same allowed ESL to recognise income, which otherwise would have come in twenty installments spread over sixty months. This also permitted ESL to clean up its books as the liabilities were building somewhere else, namely, in ESSPL. The existence of this symbiotic relationship between ESL and ESSPL provided the smokescreen that enabled ESL to camouflage its true financial position and the level of its

indebtedness. It also enabled ESL to transfer execution risk and default risk to ESSPL. The intent of the Promoters (Noticees 2 and 3) was to deliberately mislead. The result of the questionable practices is for all to see. ESL simply collapsed when the true picture emerged.

6.4. This smokescreen was to mislead the investors, who would have had no inkling that ESSPL was the alter ego of ESL. Unbeknownst of the true financial health of ESL, investors would have invested in the shares of ESL. This fraudulent non-disclosure was a means to deceive the common investor. Noticees 2 and 3 were the architects of this arrangement that resulted in an understatement of the true financial health of ESL.

6.5. In sum, there is adequate material on record to establish that — a) ESL failed to disclose ESSPL as its subsidiary for FYs 2009-10, 2010-11, 2011-12 and 2012-13; b) ESL failed to disclose financial details of its subsidiary (ESSPL) in its consolidated accounts and financial statement in the Annual Reports and failed to disclose the transactions with ESSPL as related party transactions for FYs 2009-10, 2010-11, 2011-12 and 2012-13; and c) ESL failed to show a true and fair picture of its financial position for FYs 2009-10, 2010-11, 2011-12 and 2012-13 thereby violating Section 12 A (b) and (c) of the SEBI Act along with Regulations 3(b), 3(c), 3(d), 4(1), 4(2) (f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations. In addition to that it has been found that ESL has violated Clause 32 and provision (IV) (A) of Clause 49 of the Listing Agreement read with Regulation 103 (2) of the LODR Regulations and SCRA, 1956.

6.6. In view of the same, the SCN has contemplated appropriate directions under Sections 11(1), 11 (4), 11B (1) of the SEBI Act, 1992 against ESL for the aforesaid violations. Also, the SCN has contemplated directions under Sections 11 (4A) and 11B (2) of the SEBI Act and Section 12 A (2) of the SCRA, 1956 imposing monetary penalty as stated in Section 15HA of the SEBI Act and Section 23E of the SCRA, 1956.

6.7. It would be relevant to place hereunder the extracts of the appropriate penalty provisions for facility of reference:

Penalty for fraudulent and unfair trade practices. Section 15HA of SEBI Act, 1992: “If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.”

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds. Section 23E, SCRA, 1956. “If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.”

6.8. It has already been brought out in the preceding paragraphs that ESL was under CIRP pursuant to the order dated May 30, 2017 of the NCLT, Principal Bench, New Delhi. Consequently thereof, Mahender Khandelwal was appointed as the RP to conduct the CIRP vide order dated September 12, 2017 of the NCLT. In this regard, it has been contended by the RP that ESL be removed from the SCN, and it be discharged from the present proceedings. It is acknowledged that there is limited scope for pursuing enforcement actions against ESL in view of it undergoing CIRP under the IBC, and the same shall be appropriately reflected in the directions.

6.9. It has, however, been brought out that Shantanu Prakash and Jagdish Prakash were intimately involved in the affairs of the business and were aware of the true nature of the relationship existing between ESL and ESSPL.

6.10. In view of the same, it has already been brought out that Shantanu Prakash is liable for the violation of Section 12 A (b) and (c) of the SEBI Act along with Regulations 3(b), 3(c), 3(d), 4(1), 4(2) (f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations. Additionally, it has been brought out that Shantanu Prakash was also liable for the violation of provision (V) (a) of Clause 49 of the Listing Agreement read with Regulation 103 (2) of the LODR Regulations and SCRA, 1956. Accordingly, I

conclude that appropriate directions under Sections 11(1), 11 (4), 11B (1) of the SEBI Act, 1992 need to be issued in respect of Shantanu Prakash.

6.11. The SCN has also contemplated directions under Sections 11 (4A) and 11B (2) of the SEBI Act and Section 12 A (2) of the SCRA, 1956 imposing monetary penalty as stated in Section 15 HA of the SEBI Act and Section 23 H of the SCRA, 1956.

6.12. In this regard before going ahead with the determination of monetary penalty, it would be relevant to provide hereunder the appropriate provision for imposition of penalty:

Penalty for contravention where no separate penalty has been provided. Section 23H, SCRA, 1956. “Whoever fails to comply with any provision of this Act, the rules or articles or byelaws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.”

6.13. Upon a consideration of the aforementioned penalty provisions, I find that Section 15 HA has been invoked for fraudulent and unfair trade practices indulged by Shantanu Prakash. It has already been brought out that there was fraudulent non-disclosure that misled investors. Also, the fact that the financial statements did not provide a true and fair picture of the amounted to a misrepresentation. These violations were carried out when Shantanu Prakash was the Managing Director and Chairman of ESL. I, therefore, find that penalty under Section 15 HA is clearly attracted.

6.14. I further note that Section 23 H of the SCRA has been invoked against Shantanu Prakash for the violation of the provisions of the listing agreement for which no specific section is in place for imposition of penalty. I note that it has already been established that by failing to ensure that the financial statements placed before the board did not contain a materially untrue statement or there was an omission of any

material fact or contain statements that could be misleading, Shantanu Prakash has violated provision (V) (a) of Clause 49 of the Listing Agreement read with Regulation 103 (2) of the LODR Regulations and SCRA, 1956. I therefore, find that penalty under Section 23 H of the SCRA is clearly attracted.

6.15. In respect of Jagdish Prakash, it has already been brought out that he is liable for the violation of Section 12 A (b) and (c) of the SEBI Act along with Regulations 3(b), 3(c), 3(d), 4(1), 4(2) (f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations. Accordingly, I conclude that appropriate directions under Sections 11(1), 11 (4), 11B (1) of the SEBI Act, 1992 need to be issued in respect of Shantanu Prakash.

6.16. The SCN has also contemplated directions under Sections 11 (4A) and 11B (2) of the SEBI Act imposing monetary penalty as stated in Section 15 HA of the SEBI Act.

6.17. Upon a consideration of the aforementioned penalty provisions, I find that Section 15 HA has been invoked for fraudulent and unfair trade practices indulged by Jagdish Prakash. It has already been brought out that there was fraudulent non-disclosure that misled investors. Also, the fact that the financial statements did not provide a true and fair picture of the financial health of ESL amounted to a misrepresentation. These violations were carried out when Jagdish Prakash was an Executive Director of ESL. I, therefore, find that penalty under Section 15 HA is clearly attracted.

6.18. It is relevant to mention here that for the imposition of penalty under the provisions of the SEBI Act, 1992, guidance is provided by Section 15J of the SEBI Act, 1992. The said provision reads,

“Factors to be taken into account while adjudging quantum of penalty. 15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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.

Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

Similarly, I note that for the imposition of penalty under the provisions of SCRA, Section 23J of the SCRA provides as follows:

“Factors to be taken into account while adjudging quantum of penalty. 23J. While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or 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.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.”

6.19. Additionally, reference is made to the case of Adjudicating Officer Securities and Exchange Board of India V. Bhavesh Pabari whereby the Supreme Court has held, “...if the penalty provisions are to be understood as not admitting of any exception or discretion and the penalty as prescribed in Section 15-A to Section 15-HA of the SEBI Act is to be mandatorily imposed in case of default/failure, Section 15-J of the SEBI Act would stand obliterated and eclipsed. Hence, the question referred. Sections 15-A(a) to 15-HA have to be read along with Section 15-J in a manner to avoid any inconsistency or repugnancy.”

6.20. As already brought out the revenue earned by Educomp from ESSPL was actually paid through the loan taken by its subsidiary (ESSPL) from the banks against the securitization of the receivables and the said loans were given to ESSPL on the basis of corporate guarantee given by Educomp. As a consequence of this arrangement, Educomp was fully exposed to credit risk of loan taken by ESSPL against the amount receivable from the clients i.e. the schools. However, this liability was never shown in the balance sheet of Educomp, since ESSPL was shown as a third party and not a subsidiary. By adopting the above scheme, Educomp managed to conceal its true and correct financial position from its shareholders and other investors which induced the public at large to trade in its securities based on untrue and manipulated disclosures pertaining to its books of account. ESL and its Executive Directors (Noticees 2 and 3) have adopted a fraudulent scheme to hide its true financial position from its shareholders by treating its subsidiary ESSPL as its client. In view of the above-mentioned facts, I have also considered the factors provided in Section 15 J of the SEBI Act and 23 J of the SCRA, 1956 for imposition of monetary penalty.

6.21. In consideration of the above, I shall now proceed with the directions and imposition of monetary penalties.

7. Directions and Monetary Penalties–

7.1. I, in exercise of powers conferred upon me under Sections 11(1), 11(4), 11(4A), 11B (1) and 11B (2) of the SEBI Act and Section 12 A (2) of SCRA hereby pass the following directions: -

7.1.1. In view of the above findings, the present proceedings initiated against ESL (Noticee 1) vide the SCN dated May 20, 2021 is disposed of without any directions, in view of the orders dated May 30, 2017 and September 12, 2017 of the Hon'ble NCLT, Principal Bench, New Delhi.

7.1.2. In the event, CIRP initiated under IBC pursuant to orders of the Hon'ble NCLT, Principal Bench, New Delhi is reversed, for any reason whatsoever, then in such eventuality, ESL shall:

- i. be restrained from accessing the securities market and also remain prohibited from buying, selling or dealing in securities, directly or indirectly, in any manner whatsoever, for a period of 5 years from the date of such reversal of CIRP; and
- ii. be liable for a monetary penalty, as specified hereunder:

Provisions under which penalty imposed	Amount of Penalty (Rs.)
Section 15 HA of the SEBI Act	1 crore
Section 23 E of the SCRA,1956	No penalty
Total	1 crore

7.1.3. Shantanu Prakash shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly for a period of 5 years.

7.1.4. Shantanu Prakash shall also be restrained from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, or associating himself with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI, in any capacity, for a period of 5 years.

7.1.5. Shantanu Prakash is imposed with monetary penalties as specified hereunder:

Provisions under which penalty imposed	Amount of Penalty (Rs.)
Section 15 HA of the SEBI Act	1 crore
Section 23 H of the SCRA,1956	10 lakh
Total	1 crore 10 lakh

7.1.6. Jagdish Prakash shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly for a period of 3 years.

7.1.7. Jagdish Prakash shall also be restrained from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, or associating himself with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI, in any capacity, for a period of 3 years.

7.1.8. Jagdish Prakash is imposed with monetary penalty as specified hereunder:

Provisions under which penalty imposed	Amount of Penalty (Rs.)
Section 15 HA of the SEBI Act	1 crore
Total	1 crore

7.2. Noticees 2 and 3 are directed to pay the penalty as detailed above within forty-five (45) days from the date of service of this order through online payment by using the pathway: www.sebi.gov.in/ENFORCEMENT → Orders → Orders of Chairman/ Members → Click on PAY NOW or by using the web link:

<https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. Noticees 2 and 3 shall forward the details/confirmation of penalty so paid through e-payment to “**The General Manager, ID 16 – Investigations Department, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C -7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400051**” in the format given in the table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

7.3. Noticees 2 and 3 are allowed to liquidate any open positions in derivatives that they might have within a period of three working days from the date of this order.

7.4. The above directions shall come into force with immediate effect.

7.5. A copy of this order shall be served upon the Noticees immediately. A copy shall be served on the recognised Stock Exchanges and the Depositories for necessary action.

Place: Mumbai

Date: May 30, 2023

ASHWANI BHATIA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA