

WTM/AB/NRO/NRO/7567/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

In respect of:

Noticee No.	Name of the Noticee	PAN
1.	Edynamics Solutions Limited	AAACE7849N
2.	Mr. Bharat Gupta	ALFPG6480L
3.	Ms. Anita Gupta	AOFPG8504E
4.	Mr. Vinod Kumar	BDUPK1521Q
5.	Mr. Vikas Saini	BEZPS2003H

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

In the matter of Edynamics Solutions Limited

1. Present proceedings have emanated from the Show Cause Notice dated April 04, 2019 (hereinafter referred to as “**the SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and Section 12A of Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as “**SCRA**”) to Edynamics Solutions Limited (hereinafter also referred to as “**Edynamics**” / “**the Company**”) for the alleged violation of Section 12A (a)

(b) and (c) of the SEBI Act, 1992 and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”), Regulations 6(1), 4(1) (c), (e), (g) and 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1),(3),(6),(12) of Securities and Exchange Board of India (Listing Obligations And Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”), Clause 46a of the erstwhile model listing agreement for SME companies read with Regulation 32(1) of LODR Regulations and Section 21 of SCRA and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992 and against its directors (Noticees no. 2 to 5) for the alleged violation of Section 12A (a) (b) and (c) of the SEBI Act, 1992 and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations, Regulations 4(1) (c), (e) and (g) and 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1),(3), (6), (12) of the LODR Regulations, Clause 46a of the erstwhile model listing agreement for SME companies read with Regulation 32(1) of LODR Regulations and Section 21 of SCRA and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992. Additionally, Noticee no. 3 was alleged to have violated Regulation 6(2)(a), (b) and (c) of LODR Regulations.

2. The SCN also had certain annexures, details of which are as under:

Annexure no.	Particulars of Documents
Annexure 1	Interim Order dated September 13, 2017
Annexure 2	Forensic Audit Report
Annexure 3	Inspection report for physical verification of office premises of entity by BSE
Annexure 4	Analysis of Annual Report
Annexure 5	Extract of Prospectus
Annexure 6	Extract of Annual report 2015-16 and 2016-17

Annexure 7	Correspondences between BSE, Auditor and Company
Annexure 8	Auditor's certificate on Corporate Governance

3. The brief of, facts narrated and allegations made in the SCN, is as under:

- (i) SEBI passed an *ad- interim* order on September 13, 2017 *inter alia* directing the promoters and the directors (Noticee no. 2 to 5) of the Edynamics (Noticee no.1), not to sell the shares of the ESL and directed BSE to appoint an independent auditor to conduct forensic audit of the company.
- (ii) Thereafter, in line with the aforesaid SEBI order, BSE had appointed M/s. CJS Nanda & Associates, Chartered Accountants (hereinafter referred as “**forensic auditor**”) for conducting forensic audit of Edynamics. However, the Company did not cooperate with the forensic auditor and did not provide the information requested by the auditor.
- (iii) During the first visit by the forensic auditor at the registered office address (A-406, street No. 8, road No. 4, Mahipalpur, New Delhi-110075) of Edynamics, on December 18, 2017, the registered address of the Company was not traceable and contact numbers provided by the Company were not reachable. On December 19, 2017, the Company requested the forensic auditor to reschedule the audit along with address of new location where the office has been shifted.
- (iv) During the second visit to the new office address (103, 1st Floor, plot No. 2, Triveni Complex, Veer Savarkar Block, Shakarpur, Delhi-

110092) on January 09, 2018, neither the Key Managerial Personnel (KMP) nor the director of the Company was present at its address and the staff so present at the office was not able to answer any of the queries regarding the business operations carried by the Company.

- (v) BSE conducted physical inspection of the registered office of the Company on October 23, 2018 at Office No. 103, Plot No. 2, 1st Floor, Triveni Complex, Veer Savarkar Block, Shakarpur, Delhi 110092. BSE in its report observed the following:
 - (a) There was no name board of the Company at the entrance of the premises. However, on the entrance door, name of some recruitment service was affixed on paper/sticker, which was in torn condition and hence not readable.
 - (b) The door of the office was found to be locked and none of the Company officials were present at the time of the site visit.
 - (c) It was informed that for several months the premises were found to be closed and no one appeared to visit said premises.
 - (d) Further, the Company vide its letter dated nil received by the exchange on September 15, 2018 in response to the show cause notice issued by the exchange to the Company on August 30, 2018 had provided with two mobile numbers viz. +918448581989 and 8448581986. It was observed that, mobile numbers were not registered numbers available in the exchange records and the same were also not available on the Company website. The Company had not provided the names of the concerned officials

of the Company while providing the contact details of the Company officials and BSE was unable to reach the Company officials on the said numbers.

- (e) As per the Company's latest correspondence with the exchange and information available on the Company's website, the landline number for its registered office address was 011-65670013. However, on calling the said number, the recorded messages states that "please check the number you have dialed and try again".
 - (f) It appeared that the Company does not exist at the registered office address available as per the exchange's record.
- (vi) From the annual reports of the Company, analysis of annual report of the Company done by BSE and other documents, it was observed in the investigation as under:
- i. The Company came out with an IPO in the year 2013 and one of the object of the issue as mentioned in the prospectus was to open 30 stores and to purchase tangible assets including software worth Rs. 2.85 crore. It is noted that the Company does not have any land & building and has shown the total rent expense of only Rs. 30,000 for the F.Y. 2015-16. Further, the Company has only 8 employees. In view of these facts, it appears that the Company has not taken any steps towards opening of 30 stores as it had disclosed at the time of the IPO. Also, on analysis of Annual Reports for F.Y. 2013-14 to 2015-16, it is observed that there is no addition in tangible assets including software. From the above, it appears, from the

available record, that the Company has not used the IPO proceeds for the objects of the IPO .It may be noted the Company did not provide the details of utilization of funds raised from the public including the funds raised through IPO in the year 2013 by the Company, despite seeking the information specifically.

- ii. The Company in its prospectus mentioned that Rs. 7 crore will be used as a working capital so that the goods can be purchased at cash discount of 1.5% -2%. The Company in F.Y. 2015-16 have made purchases for Rs. 2.95 crore, so going by the disclosure made by the Company in its prospectus, there is no requirement for the Company to purchase the product on credit since the Company from its IPO had kept huge amount as working capital. But on analysis of Annual Report for 2015-16, it is observed that the Company has used the funds earmarked for working capital to give loans and advances. Therefore, it *prima facie* appears that there has been a misuse of the IPO proceeds by the Company.
- iii. Further, the Company in its prospectus had mentioned that it will use Rs. 125 lacs in F.Y 2013-14 and Rs. 75 lacs in F.Y. 2014-15 for brand building. On analysis of Annual Report for F.Y. 2013-14 and 2014-15, it was observed that the Company has made expenditure of Rs. 1.54 lacs only in the F.Y. 2014-15.
- iv. On analysis of Annual Report for F.Y. 2015-16, it is observed that out of total assets of the Company Rs. 39.75 crore, the

Company has shown Rs. 8 crore as Short term loans and advances, Rs. 18.92 crore as long term loans and advances, Rs. 10.08 crore as non-current investment without any specific details. In this regard, the Company was given an opportunity to provide the details but it has failed to furnish the same. Therefore, it appears that substantial portion of the total assets i.e. Rs. 37 crore out of Rs. 39.75 crore is locked up in an unexplained manner.

(vii) The company did not provide information related to details of utilization of funds raised from the public, loans and advances granted, non-current investments made by the Company and amount shown towards stock purchase. Further, the Company did not submit any supporting documents to contest the following observations made in the Interim Order:

(a) The Company did not utilize the IPO proceeds as per the object indicated in the Prospectus.

(b) The Company used the funds, which were earmarked for working capital requirements, to grant loans and advances.

(c) Considerable portion of the total assets was locked up in an unexplained manner and the company failed to provide details for the same.

These irregularities tantamount to misrepresentation of financial /misuse of funds/ books of accounts.

- (viii) There was an obligation cast on the Company to present true and fair view on the financials in each and every respect and prepare and disclose financial statements in accordance with applicable standards of accounting and financial disclosures. The Company was required to refrain from misrepresentation and ensure that the annual reports presented do not present a misleading picture. The Company was further required to implement the accounting standards in letter and spirit in preparation of the financial statements. The Company was entrusted to see that the financial statements are correct and complete in every respect.
- (ix) It was observed during investigation that the Company had failed to present true and fair financial statements and had executed transactions which are non-genuine in nature tantamounting to misrepresentation of the accounts/ financials statement and misuse of account/ funds of the Company. It was further observed the Company had misused funds/ misrepresented books of accounts which are detrimental to the interests of genuine investors and are fraudulent in nature.
- (x) Clause 46a of the erstwhile model listing agreement for SME companies and Regulation 32(1) of LODR Regulations requires that statement of deviations in use of issue proceeds to be furnished to the stock exchange on a half yearly basis, a statement indicating material deviations, if any, in the use of proceeds of a public or rights issue from the objects stated in the offer document. It was observed that the Company has not provided such statement and has not complied with the aforesaid provisions of LODR Regulations and Listing agreement.

- (xi) It was observed that the Company was provided ample opportunities to provide documents / information during the course of proceedings. The Company was advised to file its reply/objections to the observations raised in the Interim Order time and / or avail an opportunity of personal hearing, if any, within 30 days. The Company neither filed its objection/reply nor availed the opportunity of personal hearing.
- (xii) BSE vide letter dated December 6, 2017 informed the Company about the appointment of forensic auditor and requested the Company to cooperate with the audit firm to carry out audit of the Company and also informed that non-cooperation in the matter will be viewed seriously leading to further appropriate actions. BSE vide email/letter dated February 20, 2018, May 24, 2018 and July 17, 2018 advised the Company to provide required documents/clarification and to co-operate with the forensic audit. Despite various correspondences by forensic auditor, BSE and show cause notice dated August 30, 2018 issued by BSE, the Company failed to furnish the information and documents to the forensic auditor appointed by the exchange pursuant to the SEBI order dated September 13, 2017.
- (xiii) The forensic auditor was appointed by BSE pursuant to SEBI directions, however, despite affording reasonable number of opportunities to the Company by the auditor, the Company failed to furnish requisite information / documents essential to conduct the exercise of forensic audit. Even after the show-cause notice was issued by BSE, the Company failed to furnish the said information /

documents.

- (xiv) The Company had failed to provide information and documents under Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992. The Company is, therefore, alleged to have failed to directly/indirectly adhere to the SEBI directions by not furnishing the requisite information as sought by the auditor.
- (xv) It was observed that during 2016-17, the Company had not appointed Company Secretary during the financial year as per the Auditors' Certificate on Corporate Governance. By not appointing the company secretary, the Company has not complied with the provisions of Regulation 6(1) of LODR Regulations.
- (xvi) The directors (Noticee no. 2 to 5) were responsible for all the acts of omission and commission by the Company. It was the duty and responsibility of the directors (Noticee no. 2 to 5) to ensure that proper systems and controls are in place for financial reporting and to monitor the efficacy of such systems and controls. The directors of the listed companies have greater responsibility as they have access to inside information such as the financial position of the Company, annual accounts, etc., and they take major decisions on behalf of the Company, which affects the investors. Therefore, the directors (Noticee no. 2 to 5) have allegedly failed in their duties.
- (xvii) Further, the compliance officer of the Company (Noticee no.3) was responsible under 6(2)(a), (b) and (c) of the LODR Regulations for ensuring conformity with the regulatory provisions applicable to the Company in letter and spirit, ensuring that the correct procedures had been followed that would result in the correctness, authenticity and

comprehensiveness of the information, statements and reports filed by the Company.

(xviii) It was observed that the directors (Noticee no. 2 to 5) including the compliance officer (Noticee no.3) of the Company had failed to exercise duty of care by misrepresenting the financials/misusing the funds. It was observed that the directors of the Company had failed to discharge their fiduciary responsibility. Further, the directors (Noticee no. 2 to 5) had failed to provide information to the forensic auditor. It is therefore alleged that Noticee no. 2 to 5 failed to provide information and documents under Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992.

(xix) From the above, it was observed that the company (Noticee no.1) and its directors (Noticee no. 2 to 5) failed to present true and fair financial statements, executed transactions which are non-genuine in nature resulting in misrepresentation of the accounts/ financials statement and misuse of account/ funds of the company and such acts were found to be fraudulent in nature.

4. In view of the aforesaid observations in the SCN, Noticees have been charged by the SCN for violations of the provisions of law, as listed out in the paragraph 1 of this order.

5. A perusal of the record pertaining to the present matter reveals as under:

(i) SEBI received a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs ('MCA') vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA had also annexed the letter of

Serious Fraud Investigation Office ('**SFIO**') dated May 23, 2017 which contained the database of shell companies along with their inputs.

- (ii) SEBI by its letter dated August 7, 2017 addressed to stock exchanges, *inter alia* in respect of listed shell companies including Edynamics, placed trading restrictions on promoters/directors of such companies. Vide said letter dated August 7, 2017, SEBI also directed the stock exchanges to place the scrip of such shell companies in the trade to trade category with limitation on the frequency of trades and imposed a limitation on the buyer by way of 200% deposit on the trade value.
- (iii) Pursuant to the same, BSE vide notice dated August 7, 2017, issued to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed shell companies, as identified by MCA and communicated by SEBI, with effect from August 8, 2017.
- (iv) Vide its letter dated August 22, 2017, Edynamics made a representation, *inter alia*, praying SEBI to forthwith withdraw the directions in so far as they relate to it and direct that the Company be placed back under normal trading.
- (v) In the meantime, aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, Edynamics filed an appeal No. 203 of 2017 before Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**Hon'ble SAT**"). Hon'ble SAT vide order dated August 23, 2017, directed as follows:

"2. As the appellant has already made a representation to SEBI against the said ex-parte order dated 7th August, 2017, Counsel for the appellant on instruction seeks to withdraw the appeal with liberty

to pursue the representation filed before SEBI. Accordingly, we permit the appellant to withdraw the appeal with liberty to pursue the representation pending before SEBI.

3. SEBI is directed to dispose of the representation made by the appellant as expeditiously as possible and in any event within a period of three weeks from today. It is made clear that passing of any order on the representation made by the appellant would not preclude SEBI from further investigating the matter and initiate appropriate proceedings if deemed fit.”

- (vi) As per the aforesaid directions of Hon’ble SAT, SEBI vide an Order dated September 13, 2017 (hereinafter referred to as the “**Interim Order**”), while observing that there was *prima facie* evidence of misrepresentation and violation of the LODR Regulations, 2015 including misrepresentation of Books of Accounts/Company funds by Edynamics, modified the directions contained in the SEBI letter dated August 7, 2017 and *inter alia* directed as under –

- a) The trading in securities of Edynamics shall be reverted to T group of BSE with applicable price band in trade to trade category.*
- b) Exchange shall appoint an independent auditor to conduct forensic audit of Edynamics for verification, including the credentials/financials of Edynamics and to trace the end use of funds raised by ESL from public.*
- c) The Promoters and Directors in Edynamics are permitted only to buy the securities of Edynamics. The shares held by the Promoters and Directors in Edynamics shall not be allowed to be transferred for sale, by depositories.*

d) The other actions envisaged in SEBI's letter dated August 7, 2017 in para 1(d) as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against Edynamics.

(vii) Further, in the said Interim Order dated September 13, 2017, it was also observed as under:

“Edynamics Solutions Limited is advised to file its reply/objections to this interim order, if any, within 30 days from the date of receipt of this Order and may also indicate whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard. In the event Edynamics Solutions Limited fails to file its reply or to request for an opportunity of personal hearing within the said 30 days, the preliminary findings of this Order and ad-interim directions shall stand confirmed against Edynamics Solutions Limited automatically, without any further orders.”

(viii) Since, no reply/objections to the Interim Order or request for an opportunity of personal hearing was filed by Edynamics within 30 days from the date of receipt of the Order, the preliminary findings of the Interim Order dated September 13, 2017 stood confirmed against Edynamics automatically without any further order.

Replies, Hearing and Written submissions:

6. The details of the delivery of SCN dated April 04, 2019 to the Noticees are as under:

S. No	Name of Noticee	Mode of Service and Status
1	Edynamics Solutions Limited	Delivered by Affixture on April 27, 2019
2	Bharat Gupta	Delivered by Speed Post on August 27, 2019
3	Anita Gupta	Delivered by Affixture on April 27, 2019
4	Vinod Kumar	Newspaper Publication on June 16, 2019
5	Vikas Saini	Delivered by Speed Post on April 12, 2019

7. The SCN was delivered to all the Noticees except Noticee no. 4 (Vinod Kumar), for whom, SEBI effected service of the SCN through newspaper publication, which was carried out in the Delhi Edition of Hindustan Times (English), and Dainik Jagaran (Hindi) on June 16, 2019.
8. An opportunity of personal hearing was provided to the Noticees on October 22, 2019. The details of the delivery of the notice for personal hearing are as under:

S. No	Noticee	Mode of Service and Status
1	Edynamics Solutions Limited	Delivered by Speed Post on October 12, 2019
2	Bharat Gupta	Delivered by Speed Post on October 11, 2019
3	Anita Gupta	Delivered by Speed Post on October 14, 2019
4	Vinod Kumar	Delivered by Speed Post on October 09, 2019
5	Vikas Saini	Delivered by Speed Post on October 12, 2019

9. Since, it was observed that the SCN could be delivered by Speed Post only to Noticee no. 2 and 5, as an abundant caution, notice for personal hearing was also served through affixture for Noticees no. 1 and 3 on October 16, 2019. Further, for Noticee no. 4, service of the SCN was also effected through

newspaper publication, which was carried out in the Delhi Edition of Hindustan Times (English), and Dainik Jagaran (Hindi) on October 19, 2019.

10. None of the Noticees appeared for the personal hearing on the scheduled day i.e. October 22, 2019. Further, no request for adjournment or further date of hearing was received from the Noticees. Further, no reply to the SCN has been filed by any of the Noticees.

Consideration of Submissions and Findings:

11. I have perused the SCN along with its annexures. Before considering the allegations in the SCN and the findings in the matter, the relevant provisions of law which are necessary to advert to are extracted hereunder:

Relevant extract of provisions of SEBI Act:

“Functions of Board.

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

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

(a).....

(b)....

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. .*

(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;

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

investigation or inquiry by the Board in respect of any transaction in securities;.....

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

Section 12A: *No person shall directly or indirectly, -*

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (d) ”*

Relevant extract of provisions of SCRA:

“Conditions for listing.

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.”

Relevant extract of provisions of LODR Regulations:

“Principles governing disclosures and obligations.

4.(1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

- (a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.*
- (b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration*

the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(c)The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

(d).....

(e)The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

(f)

(g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

.....

(2)The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

(a).....

(b).....

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(f) Responsibilities of the board of directors: The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information:

(1).....

(2)The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.

.....

(ii)Key functions of the board of directors-

(1)

(2).....

(3).....

(6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.

(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards...

.....

(iii) Other responsibilities:

(1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.

(2).....

(3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.

(4).....

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(6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders...

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(12) Members of the board of directors shall be able to commit themselves effectively to their responsibilities.

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Compliance Officer and his Obligations.

6. (1) A listed entity shall appoint a qualified company secretary as the compliance officer.

(2) The compliance officer of the listed entity shall be responsible for-

(a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.

(b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.

(c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.

.....

Statement of deviation(s) or variation(s).

32. (1) The listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc., -

(a) indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general

meeting, as applicable;

(b) indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds.

(2).....”

Relevant extract of provisions of PFUTP Regulations, 2003:

“3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a)

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a).....

(b).....

...

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(g)...

(h)...

.....

(r) *Planting false or misleading news which may induce sale or purchase of securities;*

.....”

Relevant extract of provisions of Listing Agreement for Listing on SME

Exchange:

“46. Statement of deviations in use of issue proceeds –

a. The Issuer agrees to furnish to the Stock Exchange on a half yearly basis, a statement indicating material deviations, if any, in the use of proceeds of a public or rights issue from the objects stated in the offer document.”

12. The main allegation levelled in the SCN against Edynamics is that the Company did not provide information related to details of utilization of funds raised from the public, loans and advances granted, non-current investments made by the company and amount shown towards stock purchase. SCN further alleges that the Company did not submit any supporting documents to contest the following observations made in the SEBI's Interim Order dated September 13, 2017:

- (a) The company failed to submit statements pertaining to deviation in utilization of issue proceeds.
- (b) The company used the funds, which were earmarked for working capital requirements, to grant loans and advances.
- (c) Considerable portion of the total assets was locked up in an unexplained manner and the company failed to provide details for the same.

13. Thus, SCN alleges that these irregularities tantamount to failure to make material disclosures, misrepresentation of financials statements and failure to submit statements pertaining to deviation in utilization of issue proceeds.

14. I note that in the Interim Order against the Edynamics, following *prima facie* observations were made:

“19. Based on the material available on record, prima facie observations are as under:

- i) The company came out with an IPO in the year 2013 and one of the object of the issue as mentioned in the prospectus was to open 30 stores and to purchase tangible assets including software worth Rs. 2.85 crore. It is noted that the company does not have any land & building and has shown the total rent expense of only Rs. 30,000 for the F.Y. 2015-16. Further, the company has only 8 employees. In view of these facts, it appears that the company has not taken any steps towards opening of 30 stores as it had disclosed at the time of the IPO. Also, on analysis of Annual Reports for F.Y. 2013-14 to 2015-16, it is observed that there is no addition in tangible assets including software. From the above, it appears, from the available record, that the company has not used the IPO proceeds for the objects of the IPO. It may be noted the Company did not provide the details of utilization of funds raised from the public including the funds raised through IPO in the year 2013 by the company, despite seeking the information specifically.*
- ii) The company in its prospectus mentioned that Rs. 7 crore will be used as a working capital so that the goods can be*

purchased at cash discount of 1.5% -2%. The company in its F.Y. 2015-16 have made purchase for Rs. 2.95 crore, so going by the disclosure made by the company in its prospectus, there is no requirement for the company to purchase the product on credit since the company from its IPO had kept huge amount as working capital. But on analysis of Annual Report for 2015-16, it is observed that the company has used the funds earmarked for working capital to give loans and advances. Therefore, it prima facie appears that there has been a misuse of the IPO proceeds by the company.

iii) Further, the company in its prospectus had mentioned that it will use 125 lacs in F.Y 2013-14 and Rs. 75 lacs in F.Y. 2014-15 for brand building. On analysis of Annual Report for F.Y. 2013-14 and 2014-15, it was observed that the company has made expenditure of Rs. 1.54 lacs only in the F.Y. 2014-15.

iv) On analysis of Annual Report for F.Y. 2015-16, it is observed that out of total assets of the company Rs. 39.75 crore, Company has shown Rs. 8 crore as Short term loans and advances, Rs. 18.92 crore as long term loans and advances, 10.08 crore as non-current investment without any specific details. In this regard, ESL was given an opportunity to provide the details but it has failed to furnish the same. Therefore, it appears that substantial portion of the total assets i.e. 37 crore out of 39.75 crore is locked up in an unexplained manner.

20. It is noted that during the hearing on September 4, 2017, the authorized representative of ESL was asked to provide ESL's response on certain queries and to submit certain information (mentioned above). He was also asked to provide documentary evidence in support of ESL's response. However, on a perusal of

ESL's reply which was filed today (i.e. with a delay of 6 days), it is noted that it has only filed partial information / response. Regarding the utilization of funds raised through IPO and preferential allotments, it has merely stated that the utilization was done in accordance with the objects of the respective issues. It is observed that no document or detail has been provided in support of the said statement regarding utilization of IPO proceeds and preferential issue proceeds. Further, ESL was also asked to provide details relating to 'loans and advances and non-current investments' and 'amount shown towards stock purchase' as reflected in the financial statements of ESL. In response thereto, instead of providing any details or documents in support thereof, ESL drew the reference back to its financials. Thus, I find that ESL has failed to provide a satisfactory response to the queries / information sought from it during the hearing.

21. In view of the above, there is prima facie evidence that ESL has not deployed the proceeds of the IPO in accordance with the objects of the IPO. I note that during the hearing, ESL was asked certain specific queries / information in that regard along with relevant documents to substantiate the same, but it has failed to submit any satisfactory response to the same. In view of the above, I find that there is prima facie evidence, by adverse inference, of misuse of funds by ESL. Further as already observed in para 19(ii), there is prima facie case for misuse of the IPO proceeds by the company.

22. Further, it is noted that a substantial portion of the total assets of the company i.e. 37 crore out of 39.75 crore is locked up and the company has failed to provide a satisfactory explanation in that regard. Thus, while there is no prima facie evidence of misrepresentation of books of accounts by the company, there arises a

suspicion regarding the genuineness of its books of accounts.”

15. I note that SEBI's Interim Order, as quoted above, records that Edynamics did not provide satisfactory response as sought from it during the course of the hearing with regard to deployment of IPO proceeds. However, Interim Order gave another opportunity to Edynamics to come clean on the *prima facie* observations made in the Interim Order, by advising as under:

“30. The findings in this order have been rendered on the basis of the prima facie evidence available at this stage. However, detailed examination/ forensic audit needs to be undertaken to unearth the entire extent of violations. In this context, Edynamics Solutions Limited is advised to file its reply/objections to this interim order, if any, within 30 days from the date of receipt of this Order and may also indicate whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard. In the event Edynamics Solutions Limited fails to file its reply or to request for an opportunity of personal hearing within the said 30 days, the preliminary findings of this Order and ad-interim directions shall stand confirmed against Edynamics Solutions Limited automatically, without any further orders.”

16. As alleged in the SCN, no reply/objection, as advised in the Interim Order, was provided by Edynamics. Edynamics has also not provided any information in this regard to the forensic auditor appointed by BSE pursuant to the directions given in the Interim Order. I note that in the present proceedings also, none of the Noticees have either filed any reply or appeared for personal hearing granted to them. In this regard, I note that observations in the Interim Order and consequent allegation in the SCN regarding the misrepresentation in the

financial statements and failure to submit statements pertaining to deviation in utilization of issue proceeds have been made on the basis of Annual Reports of the Company for the financial years 2013-14, 2014-15 and 2015-16 and the prospectus issued by the Company for its Initial Public Offer made in the year 2013. Thus, in the absence of any evidence to the contrary, I find that such allegations are to be taken as correct. In this regard, I further note that Section 114 of the Indian Evidence Act, 1872 (Evidence Act) provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (g) to Section 114 of the Evidence Act provides that the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. Section 114 of the Evidence Act further provides that in considering whether such maxim [as given in illustrations (g) to Section 114] do or do not apply to the particular case before it, the Court shall also have regard to the fact that a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family. I note that provisions of Evidence Act are not strictly applicable to the proceedings under Section 11(1), 11(4) and 11B of SEBI Act, 1992 and Section 12A of SCRA, however, the first principles of law underlying the provisions of Evidence Act may always be adverted to deal with a particular fact situation in such proceedings. In the present case, I note that Edynamics could have provided the information but it has not provided the information either in reply to the Interim Order or to the forensic auditor or in the present proceedings. I further note that the information required was pertaining to the financial statements of a listed public company which are required to be disclosed by such company on quarterly, half yearly and annual basis to the stock exchange and to submit statements pertaining to deviation and variation

in utilization of issue proceeds, in accordance with the applicable provisions of Securities Laws. I also note that providing of such information cannot be said to injure feelings and reputation of the Noticees/their families, as such information is already required to be disclosed under the law. Thus, in the present case, I presume that such information which Edynamics has not produced, if produced would be unfavourable to it. It leads to an inference that *prima facie* observations made in the Interim Order which are based on the examination of the Annual Reports and Prospectus of the Company, are correct.

17. Now the question is whether the *prima facie* observations made in the Interim Order leads to the inference regarding failure to make material disclosures, misrepresentation of financials statements and failure to submit statements pertaining to deviation in utilization of issue proceeds, as made in the SCN or not. A perusal of these observations, as quoted in paragraph 14 above, reveals that the Company has not used the proceeds of its IPO made in the year 2013, in accordance with the object of the issue, as disclosed in the prospectus. The Company came out with an IPO in the year 2013 and one of the object of the issue as mentioned in the prospectus was to open 30 stores and to purchase tangible assets including software worth Rs. 2.85 crore. It was noted that the Company did not have any land & building and had shown the total rent expense of only Rs. 30,000/- for the financial year 2015-16. Further, the Company had only 8 employees. In view of these facts, it was found that the Company had not taken any steps towards opening of 30 stores as it had disclosed at the time of the IPO. Also, on analysis of Annual Reports for financial years from 2013-14 to 2015-16, it was observed that there was no addition in tangible assets including software. The Company in its prospectus mentioned that Rs. 7 crore will be used as a working capital so that the goods can be purchased at cash discount of 1.5% - 2%. The Company

in its Annual Report for financial year 2015-16 disclosed that it had made purchase for Rs. 2.95 crore on credit, so going by the disclosure made by the Company in its prospectus, there is no requirement for the Company to purchase the product on credit since the Company from its IPO had kept huge amount as working capital. But on analysis of Annual Report for the financial 2015-16, it was observed that the Company had used the funds earmarked for working capital to give loans and advances. Further, the company in its prospectus had mentioned that it will use Rs. 125 lacs in the financial year 2013-14 and Rs. 75 lacs in the financial year 2014-15 for brand building. On analysis of Annual Report for the financial year 2013-14 and 2014-15, it was observed that the Company has made expenditure of Rs. 1.54 lacs only in the financial year 2014-15. From the above, it is apparent that the Company had failed to submit statements pertaining to the deviation and variation in utilization of issue proceeds.

18. Another charge which emanates from the prima facie observations made in the Interim Order is that a substantial portion of the total assets of the Company i.e. 37 crore out of 39.75 crore was locked up and the Company had failed to provide a satisfactory explanation in that regard. In this regard, Interim Order observes as per Annual Report of the Company for the financial year 2015-16, the Company has shown Rs. 8 crore as Short term loans and advances, Rs. 18.92 crore as long term loans and advances, Rs. 10.08 crore as non-current investment without any specific details. In this regard, the Company was given an opportunity to provide the details but it failed to furnish the same. In the present proceedings also no such details have been provided by the Company. It leads to an inference that these loans and advances/non-current investments may not be in existence because of which the Company failed to provide any details of them. Thus, the books of accounts of Edynamics were misrepresented to the extent of Rs. 37 crore. The said entries

in the books of accounts of Edynamics must also be looked in the light of the fact that the proceedings against Edynamics were initiated on the premise that Edynamics is a shell company having only book entries and no actual business operations. When so looked, these entries pertaining to short/long term loans and advances and non-current investments in the books of accounts of Edynamics, can be said to be misrepresentation of financial statements to that extent.

19. I agree with the observations made in the SCN that as a listed company, there was an obligation cast on the Company to present true and fair view on its financials in each and every respect and prepare and disclose financial statements in accordance with applicable standards of accounting and financial disclosures. I find that by making misrepresentations in its books of accounts the Company has violated Regulations 4(1) (c), (e), (g) and 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1),(3),(6),(12) of LODR Regulations, as alleged in the SCN. Further, Clause 46a of the erstwhile model listing agreement for SME companies requires that the company must furnish to the stock exchange on a half yearly basis, a statement indicating material deviations, if any, in the use of proceeds of a public or rights issue from the objects stated in the offer document and Regulation 32(1) of the LODR Regulations requires the listed company to submit on a quarterly basis, statements pertaining to deviation and variation in utilization of issue proceeds. I find that the Company has not provided such statement and has thus violated Regulation 32(1) of LODR Regulations and Clause 46a of the erstwhile equity listing agreement for SME companies, as alleged in the SCN. Regulation 6(1) of the LODR Regulations specifies that a listed entity shall appoint a qualified company secretary as the compliance officer. As per the Auditors' Certificate on Corporate Governance, during the financial year 2016-17, the Company had not appointed Company Secretary. I find that by not appointing a company secretary and consequently,

a compliance officer, the Company has violated Regulations 6(1) of LODR Regulations, as alleged in the SCN. I note that Section 21 of the SCRA provides that when the securities of a company are listed on a stock exchange on the application by any person such person shall comply with the conditions of listing. In terms of provisions of Section 11 and 11A of the SEBI Act and under the provisions of SCRA, LODR Regulations have been framed to provide for conditions of listing. In view of the violations of the provisions of the LODR Regulations, by the Company, as mentioned above, the Company has violated Section 21 of SCRA also.

20. I note that by making misrepresentation in its book of accounts, the Company has indulged in fraudulent act as the misrepresented books and accounts of the Company had the potential to induce the investors to trade in scrip of the Company. Therefore, the Company has violated Section 12A (a), (b) & (c) of SEBI Act and Regulation 3(b), (c) & (d) and Regulation 4(1) and 4(2) (f) & (r) of PFUTP Regulations, 2003.

21. I observe that BSE vide letter dated December 6, 2017 informed the Company about the appointment of forensic auditor and requested the Company to cooperate with the audit firm to carry out audit of IISL. It was also informed that non-cooperation in the matter will be viewed seriously leading to further appropriate actions. Further, BSE vide email/letter dated February 20, 2018, May 24, 2018 and July 17, 2018 advised the Company to provide required documents/clarification and to co-operate with the forensic audit. However, despite various correspondences by the forensic auditor and BSE and show cause notice dated August 30, 2018 issued by BSE, I find that the Company has failed to furnish the information and documents to the forensic auditor appointed by the exchange pursuant to the SEBI's Interim Order dated September 13, 2017. Hence, I find that the Company has failed to provide

information and documents and has thus violated Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992.

22. I note that financial statements are very important documents of a listed company which is very critical for the investors and other stakeholders to take an informed decision regarding investment/dealings in/with the listed company. Therefore, law requires that such financial statements contain true and fair information, in accordance with the applicable accounting standards. A company being juristic person acts through its board of directors. Thus, the obligations imposed upon the listed company regarding the preparation and disclosure of financial statement, in accordance with applicable legal provisions, casts duty on the board of directors of the listed company and compliance officer, to ensure discharge of such obligation of listed company in true letter and spirit.

23. Thus, in view of the violations which the Company in the present case has been found to have committed, I find that Noticee no. 2 to Noticee no. 5 who are the directors of the Company have also violated Section 12A (a) (b) and (c) of the SEBI Act, 1992 and Regulation 3(b), (c) and (d) and Regulation 4(1) and 4(2) (f) and (r) of the PFUTP Regulations, Regulations 4(1) (c), (e) and (g) and 4(2)(f)(i)(2), 4(2)(f)(ii)(6)&(7), 4(2)(f)(iii)(1),(3), (6), (12) of LODR Regulations, Clause 46a of the erstwhile model listing agreement for SME companies read with Regulation 32(1) of LODR Regulations and Section 21 of SCRA and Section 11(2)(i) and 11(2)(ia) of the SEBI Act, 1992.

24. I note that Noticee no. 3 who in addition to being a director of the Company was also a compliance officer as per the information available on the Company website and with BSE, has not ensured conformity with the regulatory provisions applicable to the Company and had not ensured that the correct

procedures are followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the Company. Thus, I find that Noticee no.3 has also violated 6(2)(a), (b) and (c) of LODR Regulations.

25. I find that in addition to the commission of violations as noted above, the Noticees who are a listed company and its directors, have been recalcitrant. The Noticees had not provided information as was required from them during the hearing granted before passing of Interim Order and also did not file any reply to the Interim Order. The Noticees have not provided information to the forensic auditor appointed by BSE pursuant to directions given in the Interim Order. The Noticees have also failed to appear and to file any reply in these proceedings. Such conduct when seen in the light of the fact that the present proceedings were against the Company were initiated on the premise that the Company is a shell company, makes it more incumbent upon the Noticees to come clean on the serious violations like failure to provide statements pertaining to deviation in utilization of issue proceeds and misrepresentation in the books of accounts alleged, especially in view of the fact that the Noticees had very vociferously challenged the actions contemplated in the letter dated August 07, 2017, addressed to the stock exchanges, before SEBI and Hon'ble SAT. Thus, having regard to the nature of violations and conduct of the Noticees, issue of regulatory directions under Sections 11, 11A and 11B of the SEBI Act, 1992 and Section 12A of SCRA, is called for in the present matter.

DIRECTIONS:

26. In view of the above, I, in exercise of the powers conferred upon me under Sections 11, 11A and 11B of the SEBI Act, 1992 and Section 12A of the SCRA read with Section 19 of the SEBI Act, 1992, hereby direct that,-

- a) The Noticees are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, for a period of 2 (two) years from the date of coming into force of this Order; and
- b) Noticees no. 2 to 5 are prohibited from holding any position as Director or Key Managerial Person in any other company having its securities listed on recognized stock exchange for a period of 2 (two) years from the date of coming into force of this Order.

27. This Order comes into force with immediate effect.

28. A copy of this order shall be sent to the Noticees, recognised Stock Exchanges, the relevant Banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

29. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs along with a copy of the Forensic Audit Report for their information.

Place: Mumbai

Date: April 27, 2020

Sd/

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA