**QJA/AA/IVD/ID8/29416/2023-24**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

**UNDER SECTION 11(1), 11(4), 11(4A), 11B(1) AND 11B(2) OF THE SECURTIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH SECTION 15H(ii) OF THE SECURTIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 44 AND 45 OF THE SECURTIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997 READ WITH REGULATIONS 32 AND 35 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.**

**IN THE RESPECT OF-**

| SR. NO. | NAME OF THE ENTITIES | PAN/ Company No. |
|---|---|---|
| 1. | Ferryden International Limited | 639771 |
| 2. | Shri Ashok Bhandari | ABVPB1331K |

*(hereinafter individually referred to as Noticee Nos. 1 and 2 and collectively referred to as Noticees)*

**IN THE MATTER OF ELECTROTHERM INDIA LIMITED-**

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**BACKGROUND:**

**1.** Securities and Exchange Board of India ("SEBI") had passed an order dated March 16, 2023 in respect of Ferryden International Limited, a company incorporated in British Virgin Islands (hereinafter referred to as "Ferryden / Noticee No. 1"), 100% owned by Shri Ashok Bhandari (hereinafter referred to as "Noticee No. 2") and issued the following directions for violating the provisions of Regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("SAST Regulations, 1997") in the matter of Electrotherm (India) Limited ("EIL"):

*"33.1 Noticee Nos. 1 and 2 i.e. Ferryden International Limited and Shri Ashok* Bhandari *are directed to:*

*(i) take the requisite steps within a period of 15 days from the date of this order to complete the open offer to acquire shares of the target company in accordance with*

*the provisions of the SAST Regulations, 1997 read with the provisions of SAST Regulations, 2011;*

*(ii) pay, along with the consideration amount, interest at the rate of 10% per annum from March 12, 2007 to the date of payment of consideration, to the shareholders whose shares are accepted in the open offer.*

*33.2 Except for the purpose of ensuring compliance with the direction at paragraph 33.1 above, Noticee nos. 1 and 2 are restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, in any manner, whatsoever, till the time they ensure compliance with the directions issued at paragraph 33.1.*

*33.3 The Noticees are hereby imposed with a penalty of Rs. 10,00,000 (Rupees Ten Lakh Only) to be paid, jointly and severally, under Section 15H(ii) and are directed to pay the said penalty within a period of forty five (45) days from the date of receipt of this order….."*

**2.** Aggrieved by the said order, the Noticees had filed an Appeal bearing No. 442 of 2023 before the Hon'ble Securities Appellate Tribunal ("SAT"). The Hon'ble SAT, after examining the facts of the case, passed an order dated May 12, 2023 (digitally signed on June 02, 2023 and certified copy received by SEBI on June 06, 2023) and remitted the matter to the quasi - judicial authority to pass an appropriate order after considering the other provisions of Regulation 44 of the SAST Regulations, 1997 within three months. While remitting the said matter, the Hon'ble SAT made the following observations,

*"8…….Admittedly, the acquisition was made on 12th March, 2007. Since the acquisition was more than 15% it triggered the compliance of Regulation 10 by way of making a public announcement for an open offer. Admittedly, this was not done.*

*10. Upon perusal of the records, we are satisfied that there is no undue delay in the initiation of the proceedings in as much as the acquisition was not made public by the appellants and that it came to the knowledge of the authorities only in 2019 pursuant to which an investigation was initiated and show cause notice was issued on 2021. Thus, there is no undue delay in the initiation of the proceedings.*

*15. In our view the decision of the Supreme Court in Sunil Khaitan (supra) is squarely applicable in the instant case. Admittedly, the acquisition was made in the year 2007. At that time, there were 3,618 shareholders who could have availed the opportunity to exit from the target Company. As on date there are only 400 shareholders and,*

*therefore, the direction to make an open offer will not provide equality of treatment to all stakeholders who held shares on the trigger date.*

*16. In view of the long lapse of time from the date of acquisition till the date of the impugned order the discretion exercised by the CGM in directing the appellants to make an open offer was not a proper exercise of discretion. The discretion is an effective and important tool for effective and good governance administration but in the present context such exercise of discretion was not appropriate given the fact that Regulation 44 provides other options which could have been exercised. In our opinion, the exercise of discretion in the instant case was not fair and reasonable.*

*17. Considering the aforesaid, the order of the CGM directing the appellants to make an open offer and pay interest cannot be sustained. Consequently, the direction restraining the appellants from accessing the securities market also cannot be sustained.*

*18. For the reasons stated aforesaid, the impugned order dated 16th March, 2023 passed by the CGM of SEBI cannot be sustained and is quashed. The appeal is allowed.*

*19. The matter is remitted to the CGM to pass an appropriate order afresh after considering other provisions of Regulation 44 of the SAST Regulations, 1997 within three months from today."*

**3.** In view of the aforesaid order passed by the Hon'ble SAT, in compliance with the principles of natural justice, an opportunity of personal hearing was granted to the Noticees on July 19, 2023 before me. The Noticees were also advised to file their reply / written submissions on the issue of suitability of directions which may be issued under Regulation 44 of the SAST Regulations, 1997 in terms of order dated May 12, 2023 passed by the Hon'ble SAT before the scheduled date of hearing. However, vide email dated July 10, 2023, the Authorized Representative (AR) for the Noticees, stated that as the senior counsel appearing on behalf of the Noticees is having some difficulty on the scheduled date, the hearing may be adjourned to any other date preferably on July 26th, 27th, 28th, 31th or August 01st, 03rd, 04th. Acceding to the same, another opportunity of personal hearing was granted to the Noticees on July 27, 2023. Vide email dated July 26, 2023, the ARs confirmed their attendance, in person, for the scheduled hearing. On the date of hearing, the ARs appeared on behalf of the Noticees and referred to the relevant paragraphs from the order dated May 12, 2023 passed by the Hon'ble SAT. Further, reference was also made to the judgement of

the Hon'ble Supreme Court in the case of *SEBI Vs. Sunil Khaitan*[1] dated July 11, 2022. It was submitted that considering the current shareholding of the Noticees in EIL, which is approximately around 7% and the observations of the Hon'ble SAT while remanding the case, appropriate directions may be issued. The ARs for the Noticees requested for time to file their written submissions in the matter. Accordingly, time till August 07, 2023 was granted to them to file their reply in the matter.

**4.** Thereafter, vide letter dated August 03, 2023 (received on August 04, 2023) and email dated August 07, 2023, the Noticees filed their written submissions and the same are summarized as under:

(i) The Noticees submitted that the SCN which was issued on December 13, 2021 alleged Noticee No. 1 of acquiring the shareholding of Castleshine Pte Ltd ("Castleshine") and Leadhaven Pte Ltd ("Leadhaven") which in turn held 21.90% of the paid – up equity share capital of EIL which had triggered the obligation to make an open offer under Regulation 10 of the erstwhile 1997 Takeover Regulations and the same was allegedly not made.

(ii) It is submitted that the issuance of warrants were with a view to further the business and capital requirement of EIL - to the benefit of the public shareholders of EIL.

(iii) The warrants allotted on a preferential basis had been issued in full compliance with Chapter XIII of the erstwhile SEBI (Disclosure and Investor Protection) Guidelines, 2000, applicable at the relevant time.

(iv) The issuance of warrants was approved by the public shareholders of EIL. The entire process thereof was in the public domain and was disclosed on the BSE from time to time.

(v) The issuance of warrants and the conversion thereof has only benefited the public shareholders as this would mean that the projects and capital requirements of EIL could be funded. Therefore, it is submitted by the Noticees that nothing untoward or egregious transpired in the instant case.

[1] (2022) SCC Online 862

(vi) There has been no change in the composition of the Board of Directors of EIL after the impugned acquisition in question and the Noticees are presently holding 7.85% shareholding in EIL.

(vii) SEBI had passed an order dated March 16, 2023 which was set aside by the Hon'ble SAT and the matter was remanded to consider the suitability of other directions in Regulation 44 (other than those passed in the SEBI Order).

(viii) While quoting the operative part of the order dated May 12, 2023 passed by the Hon'ble SAT in the instant case, the Noticees have submitted that Regulation 44 confers on SEBI the dicretion to pass a range of directions. In the given case, it can also choose not to pass any directions. The proposition that there is no compulsion on SEBI to issue directions under Regulation 44 has been stated by placing reliance on the ruling of the Hon'ble Supreme Court in *SEBI Vs. Sunil Krishna Khaitan & Ors*.

(ix) The Noticees submit that the Hon'ble SAT also requires SEBI to pass "an appropriate order" after considering the provisions of Regulation 44. Therefore, taking into account the fact that there are only 400 shareholders as on date of the SCN who would be eligible to avail of an exit, out of the 3,618 shareholders on the trigger date in 2007, no further remedial measures are necessary. It is submitted by the Noticees that none of the measures provided in Regulation 44 would be appropriate.

(x) The Noticees, while quoting each of the direction mentioned in Regulation 44 of the SAST Regulations, 1997 have made submissions which are tabulated as under:

| ***Direction under Regulations 44 of the SAST Regulations, 1997*** | ***Submissions made by the Noticees*** |
|---|---|
| *(a) Directing appointment of a merchant banker for the purpose of causing disinvestment of shares acquired in breach of regulation 10, 11 or 12 either through public auction or market mechanism, in its entirety or in small lots or through offer for sale.* | *The said direction would not be applicable since the impugned acquisition is in the nature of an indirect acquisition. The reference of "public auction" or "market mechanism" makes it clear that this contemplates divestment of direct holdings. Besides, a divestment would not at all be an appropriate measure since the Noticees current* |

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| | *holdings through Castleshine is 7.85% (as the Noticees ceased to have any holding in Leadhaven since 2018) - far less than the threshold for an open offer under the existing Takeover Regulations.* |
| *(b) directing transfer of any proceeds or securities to the Investors Protection Fund of a recognised stock exchange* | *Since disinvestment would not be an appropriate measure, this direction too would not be appropriate. Moreover, owing to:*<br>*(i) the significant lapse of time between the impugned acquisition and the initiation of the present proceedings,*<br>*(ii) a material change in the composition of the shareholders and the fact that a majority of the shareholders eligible to participate in an open offer have ceased to be shareholders;*<br>*(iii) the acquisitions being in the nature of indirect acquisitions;*<br>*(iv) the current holding of the Noticees being just 7.85%,*<br>*this would not be an appropriate measure.* |
| *(c) directing the target company or depository to cancel the shares where an acquisition of shares pursuant to an allotment is in breach of regulation 10, 11 or 12* | *While this could have been resorted to, considering that the current holding is 7.85%, there being no shares in excess of the triggering threshold, the cancellation of allotment made 16 years ago, would not be appropriate.* |
| *(d) directing the target company or the depository not to give effect to transfer or further freeze the transfer of any such shares and not to permit the acquirer or any nominee or any proxy of the acquirer to exercise any voting or other rights attached to such* | *Considering the reasons as mentioned for the earlier direction, simply freezing the shares or voting rights do not present a meaningful remedy for purposes of these proceedings. The significant lapse of time between the impugned acquisition and the initiation of the present proceedings and the fact* |

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|---|---|
| *shares acquired in violation of regulation 10, 11 or 12* | *that voting rights have been wielded for nearly two decades, rendering this particularly would be inappropriate. It should also be noted that the triggering threshold at that time was 15% whereas currently it is at 25%.* |
| *(e) debarring any person concerned from accessing the capital market or dealing in securities for such period as may be determined by the Board* | *The Learned quasi-judicial authority may consider what appropriate period of debarment from accessing the securities market or dealing in securities could be regarded as appropriate taking into account the various peculiarities attendant with the facts of the case. The earlier order which came to be set aside contained a draconian and an extreme debarment on dealing securities until an open offer is made and completed. Naturally, it came to be set aside.*<br>*The appropriateness of the length of debarment could be a function of the following:-*<br>*(a) no public shareholder has complained;*<br>*(b) this is a dispute between two warring factions in a family;*<br>*(c) the significant lapse of time between the impugned acquisition and the initiation of the present proceedings;*<br>*(d) the significant change in the triggering threshold which itself took effect 13 years ago (25%) as compared to the 15% threshold applicable in 2007.*<br>*Since the direction has a punitive effect, it would thereby require an active consideration of the doctrine of proportionality.* |

| | |
|---|---|
| *(f) directing the person concerned to make public offer to the shareholders of the target company to acquire such number of shares at such offer price as determined by the Board* | *This direction has been held to be inappropriate in the SAT Order.* |
| *(g) directing disinvestment of such shares as are in excess of the percentage of the shareholding or voting rights specified for disclosure requirement under regulation 6, 7 or 8* | *This would not be appropriate since the holdings of the Noticees are currently at 7.85% - far less than the threshold for an open offer under both, the 1997 Takeover Regulations and the existing Takeover Regulations. In any case, had the holding been in excess of the triggering threshold, a divestment to pare down the holding to below the triggering threshold could have been considered but the same is irrelevant.* |
| *(h) directing the person concerned not to dispose of assets of the target company contrary to the undertaking given in the letter of offer* | *This is not relevant at all and not appropriate to the case since this is a direction aimed at remedying the threat of an acquirer not keeping the promise in connection with disposal of assets in the offer document governing the open offer.* |
| *(i) directing the person concerned, who has failed to make a public offer or delayed the making of a public offer in terms of these regulations, to pay to the shareholders, whose shares have been accepted in the public offer made after the delay, the consideration amount along with interest at the rate not less than the applicable rate of interest payable by banks on fixed deposits.* | *This direction is not relevant since it deals with delay in payment or delay in making an open offer being compensated by interest. In the instant case, it is concluded in the SAT Order that a direction to make an open offer is inappropriate.* |

(xi) It is submitted by the Noticees that there are numerous orders of SEBI where the remedial directions under Regulation 44 of the SAST Regulations, 1997 have not been issued but a monetary penalty has been imposed. In support of the said submission, the Noticees have placed reliance on the SEBI Orders mentioned below:

*(a) Order dated July 28, 2004 passed by the Whole Time Member, SEBI in the matter of Jay Yushin Ltd,*

*(b) Order dated December 15, 2011 against Anil Gandhi & Ors passed by the Adjudicating Officer, SEBI in the matter of Zigma Software Limited,*

*(c) Order dated January 08, 2013 against Rotomac Global Private Limited passed by the Adjudicating Officer, SEBI in the matter of Flawless Diamonds Limited,*

*(d) Order dated July 18, 2018 against Saraf Holdings Limited passed by the Adjudicating Officer, SEBI in the matter of Comfort Incap,*

(e) *Order dated June 21, 2022 against Tamarind Capital Pte Limited in the matter of Indiabulls Ventures Limited*.

(xii) In view of the said submission, the Noticees stated that the instant proceedings may be disposed of by imposing a reasonable monetary penalty. The Noticees further stated that if the Learned quasi-judicial Authority feels that a direction under Regulation 44 of the SAST Regulations, 1997 would need to be issued, a reasonable restraint on dealing in securities say for a period of 6-9 months may be issued. Such a formulation would be in conformity with the principle of proportionality.

**CONSIDERATION OF ISSUES AND FINDINGS:**

**5.** I have carefully perused the SAT Order dated May 12, 2023 (*certified copy of the said order received by SEBI on June 06, 2023*), the Show Cause Notice dated December 13, 2021 ('SCN') issued to the Noticees and the written submissions dated August 03, 2023 by the Noticees post remand of the case by Hon'ble SAT. I note that in the Order having ref. no. QJA/AA/IVD/ID8/24669/2022-23 dated March 16, 2023 (*which was impugned in the SAT Appeal No. 442 of 2023*) and the SAT Order dated May 12, 2023 in Appeal No. 442 of 2023, it has already been established and found beyond doubt that the Noticees, upon acquisition of shares of EIL on March 12, 2007,

were under an obligation to make a public announcement of open offer to acquire the shares of EIL which they had admittedly failed to make in accordance with the provisions of Regulation 10 of the SAST Regulations, 1997. The relevant portions from the SAT Order dated May 12, 2023, wherein the finding has been given, are reproduced as under:

*"5. On 12th March, 2007, the appellants acquired Castleshine Pte Ltd. and Leadheaven Pte Ltd., as a result of which the appellants, i.e. noticee nos.1 and 2 acquired more than 15% of the equity shares of the target Company and, consequently, triggered compliance for making a public announcement by way of an open offer to acquire the shares of the target Company in accordance with Regulation 10 of the SAST Regulations, 1997.*

*6. Admittedly, the appellants failed to make a public announcement. Complaints in this regard were made in January, February, May and July, 2019. It has also come on record that the appellants made the necessary disclosures to the stock exchange in 2019. Based on the complaint, an investigation was made which led to the issuance of the show cause notice dated 13th December, 2021 calling upon the appellants to show cause as to why appropriate directions including penalty should not be imposed under Section 11 and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act) read with Regulation 44 of the SAST Regulations. The CGM after considering the material evidence on record held that there was no undue delay in the initiation of the proceedings and having found that the appellants had not made an open offer held that Regulation 10 of the SAST Regulations was triggered in March, 2007. The CGM while exercising its discretion directed that under Regulation 44 the appellant should make an open offer and pay interest at the rate of 10% from 12th March, 2007 to the date of payment of consideration to the shareholders of the target Company whose shares are accepted in the open offer.*

*8……Admittedly, the acquisition was made on 12th March, 2007. Since the acquisition was more than 15% it triggered the compliance of Regulation 10 by way of making a public announcement for an open offer. Admittedly, this was not done."*

**6.** However, I note that the Hon'ble SAT, while upholding the findings in the SEBI order dated March 16, 2023 with respect to the violation of Regulation 10 of the SAST Regulations, 1997 by the Noticees, observed that, "*In view of the the long lapse of time from the date of acquisition till the date of the impugned order, the discretion exercised by the CGM in directing the appellants to make an open offer was not a proper exercise of discretion. The discretion is an effective and important tool for effective and good governance administration but in the present context such*

*exercise of discretion was not appropriate given the fact that Regulation 44 provides other options which could have been exercised. In our opinion, the exercise of discretion in the instant case was not fair and reasonable. Considering the aforesaid, the order of the CGM directing the appellants to make an open offer and pay interest cannot be sustained. Consequently, the direction restraining the appellants from accessing the securities market also cannot be sustained".* Thus, the Hon'ble SAT, while making the said observations and finding that the direction issued to the Noticees to make an open offer and pay interest cannot be sustained, has remitted the matter to me for passing an appropriate order afresh after considering the other provisions of Regulation 44 of the SAST Regulations, 1997 within a period of three months from the date of the order. However, vide order dated August 24, 2023, while disposing of the Misc. Application No. 1055 of 2023 filed by SEBI, the timeline to pass the order in the present case was extended until September 30, 2023.

**7.** Here, before moving forward, I find it apposite to reproduce the relevant provisions of the SAST Regulations, 1997 which are relevant and are as under:

***Acquisition of fifteen or more of the shares or voting rights of any company.***

***10.*** *No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen percent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations.*

***Timing of the public announcement of offer.***

***14. (1)*** *The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein:*

***Directions by the Board.***

***44.*** *Without prejudice to its right to initiate action under Chapter VIA and section 24 of the Act, the Board may, in the interest of securities market or for protection of interest of investors, issue such directions as it deems fit <u>including</u> :—*

*(a) directing appointment of a merchant banker for the purpose of causing disinvestment of shares acquired in breach of regulation 10, 11 or 12 either through public auction or market mechanism, in its entirety or in small lots or through offer for sale;*

*(b) directing transfer of any proceeds or securities to the Investors Protection Fund of a recognised stock exchange;*
*(c) directing the target company or depository to cancel the shares where an acquisition of shares pursuant to an allotment is in breach of regulation 10, 11 or 12;*
*(d) directing the target company or the depository not to give effect to transfer or further freeze the transfer of any such shares and not to permit the acquirer or any nominee or any proxy of the acquirer to exercise any voting or other rights attached to such shares acquired in violation of regulation 10, 11 or 12;*
*(e) debarring any person concerned from accessing the capital market or dealing in securities for such period as may be determined by the Board;*
*(f) directing the person concerned to make public offer to the shareholders of the target company to acquire such number of shares at such offer price as determined by the Board;*
*(g) directing disinvestment of such shares as are in excess of the percentage of the shareholding or voting rights specified for disclosure requirement under regulation 6, 7 or 8;*
*(h) directing the person concerned not to dispose of assets of the target company contrary to the undertaking given in the letter of offer;*
*(i) directing the person concerned, who has failed to make a public offer or delayed the making of a public offer in terms of these regulations, to pay to the shareholders, whose shares have been accepted in the public offer made after the delay, the consideration amount along with interest at the rate not less than the applicable rate of interest payable by banks on fixed deposits.*

**8.** I note that the only issue which needs to be addressed by me in the instant matter is to determine a suitable / feasible direction which may be issued on the Noticees, other than directing them to make an open offer, under Regulation 44 of the SAST Regulations, 1997 for violating the provisions of Regulation 10 of the SAST Regulations, 1997 by failing to make a public announcement by way of an open offer for acquisition of shares of EIL. Before I proceed with the same, I find it apposite to briefly mention the facts of the case and deal with the submissions made by the Noticees post the case being remitted by the Hon'ble SAT.

**9.** I note that EIL, a public limited company, classified as Non-Government Company, is registered at Registrar of Companies, Ahmedabad. The registered office of EIL is situated at A-1, Skylark Apartment, Satellite Road, Satellite, Ahmedabad, Gujarat, 380015. The shareholding pattern of EIL during the period April 01, 2005 – March 31, 2007 was as under:

*(Source: BSE Website)*

| Particular | Quarter ended Jun 2005 | | Quarter ended Sep 2005 | | Quarter ended Dec 2005 | | Quarter ended Mar 2006 | |
|---|---|---|---|---|---|---|---|---|
| | No. Of shares | % | No. Of shares | % | No. Of shares | % | No. Of shares | % |
| **Promoter Holding** | 29,84,675 | 62.62 | 31,09,675 | 65.24 | 30,84,675 | 64.72 | 27,34,675 | 57.34 |
| **Cumulative Holding of Castleshine and Leadhaven** | - | 0 | - | 0 | - | 0 | - | 0 |
| **Non Promoter Holding excluding the cumulative holding of Castleshine and Leadhaven** | 17,81,200 | 37.38 | 16,56,700 | 34.76 | 16,81,700 | 35.28 | 20,31,700 | 42.66 |
| **Total share capital** | 47,66,375 | 100 | 47,66,375 | 100 | 47,66,375 | 100 | 47,66,375 | 100 |
| **Particular** | **Quarter ended Jun 2006** | | **Quarter ended Sep 2006** | | **Quarter ended Dec 2006** | | **Quarter ended Mar 2007** | |
| | **No. Of shares** | **%** | **No. Of shares** | **%** | **No. Of shares** | **%** | **No. Of shares** | **%** |
| **Promoter Holding** | 27,26,075 | 57.19 | 27,26,075 | 57.19 | 27,26,075 | 57.19 | 27,26,075 | 29.84 |
| **Cumulative Holding of the Castleshine and Leadhaven** | - | 0 | - | 0 | - | 0 | 20,00,000 | 21.90 |
| **Non Promoter Holding excluding the cumulative holding of Castleshine and Leadhaven** | 20,40,300 | 42.81 | 20,40,300 | 42.81 | 20,40,300 | 42.81 | 44,08,633 | 48.26 |
| **Total share capital** | 47,66,375 | 100 | 47,66,375 | 100 | 47,66,375 | 100 | 91,34,708 | 100 |

**10.** I further note that two Singapore based companies i.e. Castleshine and Leadhaven cumulatively held 18% shares in EIL. The said companies were allotted 10,00,000 warrants each on September 09, 2005 which were subsequently converted into 10,00,000 equity shares each on February 27, 2007. Upon the said conversion, as per the shareholding pattern available on BSE, Castleshine and Leadhaven as public shareholders held 10.95% each of the share capital in EIL. On March 12, 2007, Noticee No. 1 acquired 100% of both Castleshine and Leadhaven. Such acquisition resulted in Castleshine and Leadhaven becoming PACs by virtue of common holding of Noticee No. 1, which in turn was 100% held by Noticee No. 2. Also, it is noted that while making disclosures under Regulation 7(1) of the SAST Regulations, 1997 at BSE on April 15, 2019, Castleshine had disclosed Leadhaven as a PAC. Pursuant to the said acquisition, I note that Noticee No. 1 along with Noticee No. 2 acquired 21.90% in EIL i.e. more than 15% of the equity share capital of EIL which required a public announcement by way of an open offer to acquire the shares of EIL in accordance with the provisions of Regulation 10 of the SAST Regulations, 1997. However, the Noticees, by failing to make a public announcement for acquiring the

shares of EIL violated the provisions of Regulation 10 of the SAST Regulations, 1997 thereby, liable for the directions under Regulation 44 of the SAST Regulations.

**11.** The Noticees, in the written submissions dated August 03, 2023 (*post remand*), have again attempted to state that the issuance of warrants was approved by the public shareholders of EIL and the entire process thereof was in public domain and was also disclosed on BSE from time to time. I find that even though the issuance of warrants and the entire process thereof was disclosed to BSE and was in public domain, it is pertinent to note that the warrants were issued to Leadhaven and Castleshine by EIL which had an approval of the public shareholders. Therefore, the information which can be said to be in public domain was with respect to issuance of warrants and not with regard to the acquisition of shares of EIL by the Noticees. Furthermore, issuance of warrants does not amount to compulsory conversion of the said warrants into equity shares by the allottees. The said right of conversion may also be waived by the allottees upon completion of the relevant period. In the instant case, Leadhaven and Castleshine exercised their right to convert the warrants into equity shares and upon conversion their shareholding increased to 10.95% each in EIL. However, the Noticees triggered the open offer requirement under the SAST Regulations, 1997 on acquiring the said two companies on March 12, 2007, which cannot be said to be in the public domain. In view of the same, the submission made by the Noticee cannot be accepted. I find that the Hon'ble SAT in its order dated May 12, 2023, while remitting the instant case, has also observed as under:

*"10. Upon perusal of the records, we are satisfied that there is no undue delay in the initiation of the proceedings in as much as the acquisition was not made public by the appellants and that it came to the knowledge of the authorities only in 2019 pursuant to which an investigation was initiated and show cause notice was issued on 2021. Thus, there is no undue delay in the initiation of the proceedings".*

**12.** I further note that there are certain orders passed by SEBI which have been relied upon by the Noticees in their written submissions dated August 03, 2023 to state that there are numerous cases where SEBI, instead of issuing remedial directions under Regulation 44 of the SAST Regulations, 1997, has only imposed monetary penalty and disposed of the matters. However, upon perusal of such orders, I note that most of the orders mentioned i.e. (i) Order dated December 15, 2011 against Anil Gandhi

& Ors in the matter of Zigma Software Limited, (ii) Order dated January 08, 2013 against Rotomac Global Private Limited in the matter of Flawless Diamonds Limited, (iii) Order dated July 18, 2018 against Saraf Holdings Limited in the matter of Comfort Incap, and (iv) Order dated June 21, 2022 against Tamarind Capital Pte Limited in the matter of Indiabulls Ventures Limited, are passed in cases wherein Adjudication proceedings under Chapter VI A of the SEBI Act, 1992 were initiated for the violation of the SAST Regulations and therefore, only monetary penalty could have been imposed on the entities therein in under such proceedings. Also, in the order passed by the Ld. Whole Time Member dated July 28, 2004 in the matter of Jay Yushin Ltd, the authority, after looking into the facts of the case, had directed that adjudication proceedings be initiated against the acquirer and therefore, subsequently the adjudicating officer, SEBI had only imposed monetary penalty in the matter. The concerned authorities approve and initiate different enforcement proceedings based on the facts and circumstances in each of the case. Based on the facts of the instant case, enforcement proceedings have been initiated for both, issuance of directions under Section 11B of the SEBI Act, 1992 and imposition of penalty under Section 15H(ii) of the SEBI Act, 1992.

**13.** I note that from a plain reading of Regulation 10 of the SAST Regulations, 1997, it can clearly be seen that in terms of the said provision no '*acquirer*', himself or with '*persons acting in concert*' with him, can acquire 15% or / and more shares or voting rights in a target company unless such acquirer makes a public announcement to acquire shares of such company in accordance with Regulation 14 of the SAST Regulations, 1997. Thus, Regulation 10 of the SAST Regulations, 1997 clearly states that acquisition of more than 15% shares in a target company requires the acquirer/s to make a public announcement to acquire the shares. Making a public announcement of open offer is a pre-requisite to acquire shares beyond 15% and the said statutory obligation gets triggered, the moment the acquirer/s acquire 15% or more shares in the Target Company.

**14.** I note that the Hon'ble Supreme Court in the case of *Sunil Krishna Khaitan (Supra)* has made certain observations with respect to the discretion of the Board to issue

directions under Regulation 44 of the SAST Regulations, 1997 and the relevant portions are reproduced as under:

*"70. Use of the word 'may' and not 'shall' in Regulation 44 is significant. It is not mandatory that in case of every violation and breach of Regulations 10, 11 and 12, direction under Regulation 44 shall be issued. The interpretation gets fortified in view of the words and object of the Regulation 44 which empowers the Board to issue directions as it deems fit. Section 11(1), while broadly defining the functions of the Board, states that it is the duty of the Board to protect interest of investors in securities and to promote the development of, and regulate the securities market by such measures as it thinks fit…….The Board, therefore, when it decides to exercise its power under Regulation 44 and issues directions under the said Regulation has to keep the two facets in mind, namely, (i) interest of the securities market; and (ii) protection of interest of the investors. The exercise of discretion of the Board, in fact, would not be restricted to the two facets mentioned above as the power and functions of the Board are far broader as they include promotion, development and regulation of securities market as a whole and regulating substantial acquisition of shares and takeover of companies.*

*72. In the context of Regulations 44 and 45, it implies that the Board has the power to make a choice between different courses of action or inaction. This choice is not unfettered but is always held subject to implied limitations inherent in every statute, limitations set by the common law and the constitutional mandate of rule of law. The underlying rationale of giving discretion is to ensure that the Board exercises the discretion in consonance with legitimate values of public law, which include need to maintain legal certainty and consistency which are at the heart of the principle of rule of law. These have to be balanced with other equally legitimate public law value, which is the object and purpose of the enactment. The need for the said flexibility is given and is necessary to meet unusual and practical situations and to do justice in a particular case. The remedial order passed by the Board as the regulator must also meet the said parameters in addition to meeting the requirements of the enactment.*

*…….*

*79……. We are not stating that this direction can never be issued, but the exercise of discretion to issue the said directions has to be predicated and based upon good grounds and reasons. The directions of this nature are not automatic and are to be issued only when they are warranted and justified….."*

**15.** From the aforesaid observations, I note that the Hon'ble Supreme Court has clearly stated that directions under Regulation 44 of the SAST Regulations, 1997 can be issued keeping in mind two facets, namely, (i) interest of the securities market; and (ii) protection of interest of the investors. Further, the Hon'ble Supreme Court has also stated that, there can be other factors too which can be considered while issuing such directions. Also, it has been observed that the exercise of discretion to issue the

said directions has to be predicated and based upon good grounds and reasons. In the instant case, as on March 09, 2007, there were 3618 shareholders who could have availed of the opportunity to exit from the Target Company if a public announcement to acquire shares would have been made by the Noticee in compliance with Regulation 10 of the SAST Regulations, 1997. From the available record, the number of shareholders of EIL as on March 09, 2007 who continued to hold shares as on the date of issuance of the SCN were 400 in number. I note that the object and purpose of the SAST Regulations, 1997 as well as SAST Regulations, 2011 is to provide equality of treatment of all stakeholders, to provide an exit opportunity to the shareholders in case of substantial acquisition of shares or takeover and to ensure that persons in control of the target company do not consolidate their shareholdings in the target company in a clandestine manner and to the detriment of other shareholders. I note that regulation 44 of the SAST Regulations, 1997 and Regulation 32 of the SAST Regulations, 2011 provide for possible directions that are consequences of the breach of the provisions thereof. The guiding principles for the directions as provided in these regulations are the interests of the investors and securities market, which are the statutory guiding principles as inbuilt in the SEBI Act, 1992, the SAST Regulations, 1997 and the SAST Regulations, 2011. Considering that 400 odd shareholders were found to be holding shares of EIL on the date of issuance of the SCN who may have gotten an opportunity to exit and avail of the said benefit and by placing reliance on the decision of the Hon'ble Supreme Court in the case of *Clariant International Ltd & Anr. Vs. SEBI INSC: (2004) INSC 492*, a direction to make an open offer with interest was issued earlier vide the order dated March 16, 2023.

**16.** Here, attention is drawn to the other clauses under Regulation 44 of the SAST Regulations, 1997. The feasibility of each of the said direction in the given facts of the case has been examined and the findings with respect to each of the mentioned direction is detailed in the table below:

| **Direction under Regulations 44 of the SAST Regulations, 1997** | **Findings** |
|---|---|
| (a) Directing appointment of a merchant banker for the purpose of causing | The said direction states disinvestment of shares acquired in |

| | |
|---|---|
| disinvestment of shares acquired in breach of regulation 10, 11 or 12 either through public auction or market mechanism, in its entirety or in small lots or through offer for sale. | violation of the provisions of the SAST Regulations, 1997 either through public auction or market mechanism. In the instant case, the shares were acquired by the Noticees indirectly upon acquiring the two companies viz. Castleshine and Leadhaven. Having said that, considering that the Noticees are currently holding 7.85% shares of EIL through Castleshine (as the Noticees ceased to have any holding in Leadhaven since 2018), the said direction seems to be inappropriate. Therefore, the said direction may not be applicable in the facts of the case. |
| (b) directing transfer of any proceeds or securities to the Investors Protection Fund of a recognised stock exchange. | In view of the fact that disinvestment of securities is not a feasible direction, the said direction to transfer the sale proceeds to the Investors Protection Fund of a recognised stock exchange also is not applicable in the given facts. |
| (c) directing the target company or depository to cancel the shares where an acquisition of shares pursuant to an allotment is in breach of regulation 10, 11 or 12. | Considering that the current holding of the Noticees is 7.85% in EIL and there being no shares in excess of the triggering threshold, the said direction is inappropriate in the given facts of the case. |
| (d) directing the target company or the depository not to give effect to transfer or further freeze the transfer of any such shares and not to permit the acquirer or any nominee or any proxy of the acquirer to exercise any voting or other rights attached to such shares acquired in violation of regulation 10, 11 or 12. | Considering that the current holding of the Noticees is 7.85% in EIL and there being no shares in excess of the triggering threshold, the said direction is inappropriate in the given facts of the case. |
| (e) debarring any person concerned from accessing the capital market or dealing in securities for such period as may be determined by the Board. | I find that the said direction would act as a deterrent and would ensure market integrity. Therefore, the Noticees can be debarred from |

| | |
|---|---|
| | accessing the securities market and / or dealing in securities for a reasonable period of time. |
| (f) directing the person concerned to make public offer to the shareholders of the target company to acquire such number of shares at such offer price as determined by the Board. | The said direction issued vide SEBI Order dated March 16, 2023 has already been set aside by the Hon'ble SAT. |
| (g) directing disinvestment of such shares as are in excess of the percentage of the shareholding or voting rights specified for disclosure requirement under regulation 6, 7 or 8. | Since the holdings of the Noticees are currently at 7.85%, which is lesser than the threshold for an open offer under the SAST Regulations, 1997, the said direction would not be appropriate in the given case. Also, the said direction states of disinvestment of such shares in excess of the percentage of shareholding or voting rights for disclosure requirement and not in case of open offer requirement. |
| (h) directing the person concerned not to dispose of assets of the target company contrary to the undertaking given in the letter of offer. | The said direction is not applicable to the facts of the instant case. |
| (i) directing the person concerned, who has failed to make a public offer or delayed the making of a public offer in terms of these regulations, to pay to the shareholders, whose shares have been accepted in the public offer made after the delay, the consideration amount along with interest at the rate not less than the applicable rate of interest payable by banks on fixed deposits. | Considering that the instant case is that of failure to make a public offer in terms of Regulation 10 of the SAST Regulations, 1997, the said direction cannot be issued in the given facts. |

**17.** Considering that none of the other directions enlisted under Regulation 44 of the SAST Regulations, 1997 would have been feasible in the given facts in the instant case, I was of the considered view that directing the Noticees to make an open offer,

with interest, would have been a direction beneficial to the 400 shareholders who are still holding the shares of EIL. In view of the same, the said direction was issued in the matter vide order dated March 16, 2023 in exercise of the discretion conferred on the authority.

**18.** However, as mentioned in preceding para no. 2 and 6 above, the Hon'ble SAT, vide its order dated May 12, 2023, while upholding the findings in the SEBI order dated March 16, 2023 with respect to the violation of Regulation 10 of the SAST Regulations, 1997 by the Noticees, has remitted the matter to me for passing an appropriate order afresh after considering the other provisions of Regulation 44 of the SAST Regulations, 1997. The Hon'ble SAT has categorically observed that, "*Considering the aforesaid, the order of the CGM directing the appellants to make an open offer and pay interest cannot be sustained. Consequently, the direction restraining the appellants from accessing the securities market also cannot be sustained…. The matter is remitted to the CGM to pass an appropriate order afresh after considering other provisions of Regulation 44 of the SAST Regulations, 1997…".*

**19.** I find that Regulation 44 of the SAST Regulation is an *'inclusive'* provision of law and therefore, may include any such direction which would be in the interest of the securities market and for the protection of the interests of the investors. Therefore, in order to analyse and assess the appropriate directions which can be issued to the Noticees in the facts of the instant case, I find it appropriate to consider certain details with respect to the acquisition of shares and the trigger of the SAST Regulations, 1997. An examination into the cost which would have been involved in making an open offer, if the Noticees were to comply with the direction so issued in the order dated March 16, 2023, was undertaken for which BSE was advised to extract and furnish the trade data from its database and to calculate the open offer price in terms of Regulation 8(2)(b), 8(2)(c) and 8(2)(d) of the SAST Regulations, 2011. The said provisions of the SAST Regulations, 2011 are reproduced as under:

***"Offer Price.***

*8.(2) In the case of direct acquisition of shares or voting rights in, or control over the target company, and indirect acquisition of shares or voting rights in, or control over the target company where the parameters referred to in sub-regulation (2) of regulation 5 are met, the offer price shall be the highest of,—*

*(a)…….*
*(b)the volume-weighted average price paid or payable for acquisitions, whether by the acquirer or by any person acting in concert with him, during the fifty-two weeks immediately preceding the date of the public announcement;*
*(c)the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the twenty-six weeks immediately preceding the date of the public announcement;*
*(d) the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the date of the public announcement as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded;*
*Provided that the price determined as per clause (d) shall not apply in the case of disinvestment of a public sector undertaking by the Central Government or a State Government, as the case may be:*
*Provided further that this proviso shall apply only in case of a change in control in the public sector undertaking.……..*
*……"*

**20.** Accordingly, vide email dated July 19, 2023, BSE has furnished the following,

| **Sr. No.** | **Provisions of the SAST Regulations, 2011** | **Methodology** | **Open offer price in Rs.** |
|---|---|---|---|
| 1. | Regulation 8(2)(b) | 52 weeks Volume Weighted Average Price (VWAP) | 370.69 |
| 2. | Regulation 8(2)(c) | 26 weeks VWAP | 403.41 |
| 3. | Regulation 8(2)(d) | 60 trading days VWAP | 489.81 |

**21.** I note that in terms of Regulation 8(2) of the SAST Regulations, 2011, open offer price shall be the highest of the above three calculations. Therefore, I find that the open offer cost on the Noticees would have been Rs. 489.81 per share (*without interest*). I further find that the total paid-up capital of EIL as on quarter ending June 30, 2023 is 1,27,42,814 equity shares. If the Noticees were to make an open offer pursuant to the order dated March 16, 2023, the Noticees would have to make an announcement to acquire 15% of the paid up capital of EIL i.e. 15% of 1,27,42,814 which would be 19,11,422 equity shares. The approximate cost involved for acquiring 19,11,422 equity shares of EIL by the Noticees is as under:

| Sr. No | Particulars | Number of equity shares | Offer Price per share in Rs. | Cost in Crores |
|---|---|---|---|---|
| 1. | Shares held by continuing shareholders after excluding promoters | 1,53,507 | 1,285.75 | 19.74 |
| 2. | Shares held by others (*who acquired post trigger*) | 17,57,915 | 489.81 | 86.10 |
| | **Total** | **19,11,422** | | **105.84*** |

* *The total cost may vary depending on the actual number of shares tendered by the shareholders.*

**22.** Therefore, as can be seen from the aforesaid table, if the Noticees were to make an open offer in March 2023, the approximate cost which would have been involved in it would have been appx. Rs. 105.84 Crores (*including interest on the offer price in case of existing shareholders which were holding shares on the trigger date*).

**23.** I further find that Regulation 44(b) of the SAST Regulations, 1997 states that a direction to transfer the proceeds or securities to the Investor Protection Fund of the Stock Exchange can be issued. I note that in the past SEBI as well as the Hon'ble SAT have applied the said direction and a few illustrations are as under:

| Sr. No. | Ruling | Nature of Violation | Direction issued |
|---|---|---|---|
| 1. | In the matter of Kaycee Industries Limited (SEBI Order dated January 5, 2015) | Acquisition of 5.23% shares by way of preferential allotment resulted in breach of 0.23%. | Direction to sell excess shares i.e., 0.23% and transfer the entire proceeds of such sale to the Investor Protection and Education Fund. |
| 2. | In the matter of Bheema Cements Ltd. (SEBI Order dated July 19, 2011) | Acquisition of 4.9% by promoters of the target company in violation of 11(2) of the SAST Regulation, 1997. | In terms of Regulation 32(1)(b) of the Takeover Code, 2011, it was directed that shares acquired in violation of the Regulation be sold and the proceeds be transferred to the Investor Protection and Education Fund. |
| 3. | SBEC Systems (India) Ltd. v. SEBI (SAT Order dated January 29, 2020) | Promoter shareholding increased by 9.4% as | In terms of Regulation 32(1)(b) of the Takeover Code 2011, it |

| | | | |
|---|---|---|---|
| | | well as an additional acquisition of 1.31% by one of the promoters. | was directed that shares acquired in violation of the Regulation be sold and the proceeds be transferred to the Investor Protection and Education Fund. |
| 4. | Therm Flow Engineers Pvt. Ltd. v. SEBI (SAT Order dated May 01, 2019) | Acquisition of 0.30% shares, for a price exceeding the exempted limit and violating Regulation 3(1) r/w 3(3) of the SAST Regulations, 2011. | In terms of Regulation 32(1)(b) of the Takeover Code 2011, it was directed that excess shares of 0.04, in violation, be sold and the proceeds be transferred to the Investor Protection and Education Fund. |
| 5. | Vakrangee Holdings Pvt. Ltd. v. SEBI (SAT Order dated June 08, 2021) | Acquisition of 1% share in excess of the permitted threshold which was rectified within 18 days by sale of those shares through the exchange platform. | Proceeds of the sale directed to be deposited to the Investor Protection Fund. |
| 6. | Vas Infrastructure Limited (SEBI Order dated March 16, 2023) | Acquisition in excess of 5% acquired in violation of Regulation 11(1) of the SAST Regulations, 1997 | Sell the shares in excess and deposit the proceeds of such sale in Investor Protection Fund of SEBI. |

**24.** Upon examining the facts of each of the case mentioned in the table above, I note that, even though the other directions as mentioned under Regulation 44 of the SAST Regulations, 1997 or Regulation 32 of the SAST Regulations, 2011 have been issued by the Hon'ble SAT and different quasi-judicial authorities in SEBI, the same have been issued by them after considering the facts and circumstances of each of the said cases, which can be clearly differentiated from the instant case in hand.

**25.** I note that the Noticees are currently holding 7.85% of the paid up capital of EIL which is already below the trigger of 15% as mentioned under Regulation 10 of the SAST Regulations, 1997. Therefore, as already mentioned in the table at para 16 above,

the direction to either sell off the excess shareholding and / or transfer the proceeds or the excess securities to the Investor Protection Fund is not feasible and appropriate in the facts of the present case. However, even though the Noticees are currently not holding the shares acquired on the date of trigger i.e. March 12, 2007, the fact that they did trigger the open offer requirement under the SAST Regulations, 1997 has been established and upheld by the Hon'ble SAT in its order dated May 12, 2023. I find that on the date of trigger, the Noticees were holding 6.90% shares of EIL in excess of the threshold limit i.e. 15% in terms of the SAST Regulations, 1997 and the market value of the said shares of EIL on the trigger date i.e. March 12, 2007 was Rs. 422.45/- per share. Thus, I note that the value of the shares held in excess on the date of trigger i.e. March 12, 2007 was Rs. 26,62,01,376/- which the Noticees were not allowed to hold without making a public announcement of open offer to acquire such shares. Further, as per the records available before me, the Noticees had sold Leadhaven on November 16, 2018. On the said date, by way of sale of the said entity, the shareholding of the Noticees in EIL had decreased to 7.35%. I note that on the date of sale, the closing price of the shares of EIL (*as obtained from BSE website*) was Rs. 162.2/-. Thus, by sale of Leadhaven, it can be said that the Noticees had, indirectly, disposed of the shares in EIL having a market value of Rs. 16,22,00,000/- (10,00,000 shares * Rs. 162.2).

**26.** Further, the Registrar and Transfer Agent (RTA) was requested to give details of corporate benefits, if any, which the Noticees would have made during the period when they held the excess shares in EIL. The data, as provided by the RTA is as under:

*Corporate benefits during the period March 12, 2007 to November 16, 2018:*

| **1. Leadhaven PTE Limited- Folio: L00044** | | | | | |
|---|---|---|---|---|---|
| Warrant No. | Warrant Date | Div. Description | Dividend Amount (Rs) | Shares | Paid / Unpaid |
| 1860 | 31.03.2010 | Final Dividend for the year 2009-10 | 25,00,000 | 10,00,000 | Transferred to IEPF |
| 2727 | 31.03.2008 | Final Dividend for the | 25,00,000 | 10,00,000 | Transferred to IEPF |

| | | | | | |
|---|---|---|---|---|---|
| | | year 2007-08 | | | |
| 1583 | 31.03.2007 | 2006-2007 Final | 20,00,000 | 10,00,000 | Transferred to IEPF |
| **2. Castleshine PTE Limited Folio: C00071** | | | | | |
| Warrant No. | Warrant Date | Div. Description | Dividend Amount (Rs) | Shares | Paid / Unpaid |
| 1859 | 31.03.2010 | Final Dividend for the year 2009-10 | 25,00,000 | 10,00,000 | Transferred to IEPF |
| 2726 | 31.03.2008 | Final Dividend for the year 2007-08 | 25,00,000 | 10,00,000 | Transferred to IEPF |
| 1582 | 31.03.2007 | 2006-2007 Final | 20,00,000 | 10,00,000 | Transferred to IEPF |

**27.** As can be seen from the table above, the corporate benefits accrued by the Noticees by way of holding the equity shares of EIL over the period from March 12, 2007 to November 16, 2018 was appx. Rs. 1.40 crores by way of dividend paid on the said warrants in the years 2006-2007, 2007-2008 and 2009-2010. However, I note from the available information that the same are transferred to the IEPF (Investor Education and Protection Fund) as per the current status provided by the RTA. In terms of Section 124 of the Companies Act, 2013, it is noted that the unclaimed dividend amount is to be transferred by the Company to the IEPF after it being unclaimed for seven years. However, in terms of the proviso to Section 125(3) of the Companies Act, 2013, the person whose amounts, included the dividend amount, which have been transferred to the IEPF, shall be entitled to get refund out of the Fund, in respect of such claims, after the expiry of a period of seven years. Considering the facts of the present case, I am of the view that a direction to the Noticees to forgo the said amount of Rs. 1.40 Crore lying in the IEPF would meet the ends of justice.

**28.** Further, as the Noticees have been found to be in violation of Regulation 10 of the SAST Regulations, 1997, I am also of the view that a direction of debarment on the Noticees from accessing and dealing in the securities market for a reasonable period

and imposition of penalty under Section 15H(ii) of the SEBI Act, 1992 would be required to ensure integrity of the market, which stands undermined due to such violations.

**29.** In order to issue the said direction, it is felt important to look at the penalty provision under Section 15H(ii) of the SEBI Act, 1992 which reads as under:

> *"**Penalty for non-disclosure of acquisition of shares and takeovers.***
> ***15H.** If any person, who is required under this Act or any rules or regulations made thereunder, fails to, -*
> *(i)……*
> ***(ii)** make a public announcement to acquire shares at a minimum price; or*
> *(iii)……..*
> *(iv)……..*
> *he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher."*

**30.** For imposition of penalties under the provisions of the SEBI Act, 1992, Section 15J of the SEBI Act, 1992 provides as follows:

> *"**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."*

**31.** As mentioned in the foregoing paragraphs, I note that the if the Noticees were to make an open offer in March 2023, the approximate cost, which would have been involved in it, would have been appx. Rs. 105.84 Crores (*including interest on the offer price in case of existing shareholders which were holding shares on the trigger date*). Further, the value of the shares held in excess on the date of trigger i.e. March

12, 2007 was Rs. 26,62,01,376/- which the Noticees were not allowed to hold without making a public announcement of open offer to acquire such shares. Also, by sale of Leadhaven, it can be said that the Noticees had, indirectly, disposed of the shares in EIL having a market value of Rs. 16,22,00,000/-. In addition, the corporate benefits accrued by the Noticees by way of holding the equity shares of EIL over the period from March 12, 2007 to November 16, 2018 was appx. Rs. 1.40 crores by way of dividend paid on the said warrants in the years 2006-2007, 2007-2008 and 2009-2010. Considering that the trigger of the SAST Regulation, 1997 in the instant case was made by the Noticees in 2007 and the said fact has also been taken into consideration by the Hon'ble SAT in its remand order dated May 12, 2023, I am of the view that in addition to the direction as mentioned at preceding paragraph no. 27, imposition of an appropriate amount of monetary penalty along with a reasonable period of debarment from accessing and dealing in the securities market on the Noticees to deter such violations of the statutory provisions would meet the ends of justice.

**ORDER AND DIRECTIONS:**

**32.** In view of the above, I, in exercise of the powers conferred upon me under Section 11(1), 11(4), 11(4A), 11B(1) and 11B(2) read with Section 19 of the SEBI Act and Regulation 44 of SAST Regulations, 1997 read with Regulation 32 of the SAST Regulations, 2011, hereby issue the following directions:

**32.1** The Noticees shall forgo the benefits accrued on the equity shares of EIL held by them during the period from March 12, 2007 to November 16, 2018 after the completion of the statutory period as mentioned in para no. 25 and 26 above;

**32.2** The Noticees are debarred from accessing the securities market and also restrained from buying, selling or otherwise dealing in securities, either directly or indirectly, for a period of one (1) year from the date of this order;

**32.3** The Noticees are hereby imposed with a penalty of Rs. 1,00,00,000 (Rupees One Crore Only) to be paid, jointly and severally, under Section 15H(ii) and are directed to pay the said penalty within a period of forty-five (45) days from the date of receipt of this order;

**32.4** The Noticees shall remit / pay the aforesaid amount of penalty within 45 days of receipt of this order by using the undermentioned pathway:

www.sebi.gov.in / ENFORCEMENT → Orders → Orders of EDs / CGMs → Click on PAY NOW or by using the web link: https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

The Noticee shall forward the details / confirmation of penalty so paid through e-payment to "Division Chief, Investigation Department – 08, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051" and also to e-mail id: tad@sebi.gov.in in the format given in the table below:

| | |
|---|---|
| 1. Case Name | |
| 2. Name of payee: | |
| 3. Date of payment: | |
| 4. Amount paid: | |
| 5. Transaction no: | |
| 6. Bank details in which payment is made: | |
| 7. Payment is made for: (like penalties / disgorgement / recovery / settlement amount and legal charges along with order details) | |

**33.** This order shall come into force with immediate effect. The order shall be served upon the Noticees for ensuring compliance with the above directions. A copy of this order shall also be sent to the Monetary Authority of Singapore and the Investor Education and Protection Fund Authority, Ministry of Corporate Affairs for information and necessary action, if any.

**34.** Further, a copy of this Order shall also be forwarded to the recognized Stock Exchanges, Depositories and Registrar and Transfer Agents and Ministry of Corporate Affairs / concerned Registrar of Companies for their information and necessary action.

**Date: September 25, 2023**
**Place: Mumbai**

**Dr. ANITHA ANOOP**
**CHIEF GENERAL MANAGER**
**SECURITIES AND EXCHANGE BOARD OF INDIA**