

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. EAD-2/DSR/RG/869/2017]

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

**In respect of:
Tata Steel Limited**

**In the matter of
THE TIN PLATE COMPANY OF INDIA LIMITED**

1. Securities and Exchange Board of India (hereinafter referred to as the 'SEBI') had examined the trading in the scrip of The Tin Plate Company of India Limited (hereinafter referred to as the 'Target Company') and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act, 1992') and various Rules and Regulations made there under.
2. It was observed that the Target Company is a public Company limited by shares and the shares of the said company are listed on The Bombay Stock Exchange Limited (BSE) and The National Stock Exchange of India Limited (NSE). In September 2009, the Target Company had announced an issue of 4,31,90,851 equity shares on a rights basis to its existing shareholders with a record date of September 10, 2009, together with the issue of 1,79,96,188 fully convertible debentures in the ratio of 5 fully convertible debentures for every 8 equity shares held as on September 10, 2009, convertible into equity shares of the Target Company. Accordingly, it was observed that a letter of offer dated September 03, 2009 was dispatched to the existing shareholders of the Target Company.
3. It was observed that as a part of the rights entitlement in terms of the said Rights Issue, Tata Steel Limited (hereinafter referred to as the 'Noticee') had subscribed

to and was allotted 1,33,12,500 equity shares and 55,46,875 fully convertible debentures. Further, pursuant to its undertaking to apply for equity shares and fully convertible debentures (convertible into equity shares of the Target Company), in addition to the rights entitlement to the extent of any unsubscribed portion of the Rights Issue, the Noticee had also subscribed to and was allotted an additional 86,73,599 equity shares and 1,17,00,093 fully convertible debentures. On October 12, 2009, the target company had allotted 2,19,86,099 equity shares to the Noticee as part of its rights entitlement in terms of the rights issue. As a result, the shareholding of the Noticee in the target company had increased from 88,75,000 equity shares constituting 30.82% of the equity share capital of the target company (prior to the allotment of shares) to 3,08,61,099 equity shares constituting 42.88% of the equity share capital of the target company. Upon the said increase, the Noticee was required to make the necessary disclosures within two working days to the target company as required under Regulation 13(3) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations'). However, it was observed that the Noticee had made the said disclosures belatedly i.e. on July 02, 2012.

4. Further, on April 01, 2011, the target company again had allotted 3,13,58,123 equity shares to the Noticee pursuant to the rights issue and in terms of the letter of offer dated September 03, 2009. As a result of the said acquisition, the shareholding of the Noticee in the target company had increased from 3,08,61,099 equity shares constituting 42.88% of the equity share capital of the target company (prior to the allotment of shares) to 6,22,19,222 equity shares constituting 59.44% of the equity share capital of the target company. Upon the said increase, the Noticee was once again required to make the necessary disclosures within two working days to the target company as required under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations. However, it was observed that the Noticee had made the said disclosures belatedly i.e. on May 13, 2011.

5. SEBI, therefore, has initiated adjudication proceeding against the Noticee for the alleged violation of the provisions of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations in the matter.

Appointment of Adjudicating Officer

6. I have been appointed as the Adjudicating Officer, vide order dated September 09, 2017, under Section 15-I of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15A (b) of the SEBI Act, 1992, the alleged violation of the provisions of law by the Noticee.

Show Cause Notice, Reply and Personal Hearing

7. A Show Cause Notice dated September 25, 2017 (hereinafter referred to as the SCN) was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring it to show cause as to why an inquiry should not be held for the alleged violation of provisions of law. Vide letter dated October 23, 2017, the Noticee submitted its reply to the said SCN in the matter. Thereafter, in the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the Adjudication Rules, vide hearing notice and email dated October 26, 2017, an opportunity of personal hearing was granted to the Noticee on November 08, 2017 in the matter. The Authorized Representative (AR) appeared on the behalf of the Noticee on the scheduled date of hearing and made oral submissions. The AR reiterated the submissions made by the Noticee in its reply dated October 23, 2017.
8. Further, vide email dated November 23, 2017, the Noticee submitted that it is in the process of finalizing and filing an application for settlement in terms of SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 in the matter and thus, requested to keep the adjudication proceedings initiated against the Noticee in abeyance and grant two weeks extension of time for filing its written submissions after conclusion of the settlement proceedings in the matter.

However, vide letter dated November 29, 2017, the Noticee submitted that it would not be proceeding with the filing of settlement application in the matter and submitted its additional reply in the matter.

Consideration of Issues, Evidence and Findings

9. I have carefully perused the charges levelled against the Noticee as per the SCN, reply filed by it and the material as available on record. The issues that arise for consideration in the present case are:

(a) Whether the Noticee has violated the provisions of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations?

(b) Do the violations, if any, on the part of the Noticee attract any penalty under Section 15A (b) of the SEBI Act, 1992?

(c) If yes, what should be the quantum of penalty?

10. Before proceeding further, it will be appropriate to refer to the relevant provisions of the PIT Regulations which read as under:

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies -

Continual disclosure.

13(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

13(5) The disclosures mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:

(a) The receipts of intimation of allotment of shares, or

(b) The acquisition or sale of shares or voting rights, as the case may be.

11. I find from the SCN and the material available on record that the target company is a public Company limited by shares and the shares of the said company are listed on the BSE and NSE. In September 2009, the Target Company had announced an issue of 4,31,90,851 equity shares on a rights basis to its existing

shareholders with a record date of September 10, 2009, together with the issue of 1,79,96,188 fully convertible debentures in the ratio of 5 fully convertible debentures for every 8 equity shares held as on September 10, 2009, convertible into equity shares of the Target Company. Accordingly, it was observed that a letter of offer dated September 03, 2009 was dispatched to the existing shareholders of the Target Company.

12. It was observed that as a part of the rights entitlement in terms of the said Rights Issue, the Noticee had subscribed to and was allotted 1,33,12,500 equity shares and 55,46,875 fully convertible debentures. Further, pursuant to its undertaking to apply for equity shares and fully convertible debentures (convertible into equity shares of the Target Company), in addition to the rights entitlement to the extent of any unsubscribed portion of the Rights Issue, the Noticee had also subscribed to and was allotted an additional 86,73,599 equity shares and 1,17,00,093 fully convertible debentures. On October 12, 2009, the target company had allotted 2,19,86,099 equity shares to the Noticee as part of its rights entitlement in terms of the rights issue. As a result, the shareholding of the Noticee in the target company had increased from 88,75,000 equity shares constituting 30.82% of the equity share capital of the target company (prior to the allotment of shares) to 3,08,61,099 equity shares constituting 42.88% of the equity share capital of the target company. Upon the said increase, the Noticee was required to make the necessary disclosures within two working days to the target company as required under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations. However, it was alleged in the SCN that the Noticee had made the said disclosures belatedly i.e. on July 02, 2012.

13. Further, on April 01, 2011, the target company again had allotted 3,13,58,123 equity shares to the Noticee pursuant to the rights issue and in terms of the letter of offer dated September 03, 2009. As a result of the said acquisition, the shareholding of the Noticee in the target company had increased from 3,08,61,099 equity shares constituting 42.88% of the equity share capital of the target company (prior to the allotment of shares) to 6,22,19,222 equity shares constituting 59.44% of the equity share capital of the target company. Upon the said increase, the Noticee was once again required to make the necessary

disclosures within two working days to the target company as required under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations. However, it was alleged in the SCN that the Noticee had made the said disclosures belatedly i.e. on May 13, 2011.

- 14.** The change in the shareholding of the Noticee in the scrip of the Target Company is as under:

Date	Mode of Buy/Sell	BkngQty	Holding after transaction	As a % of share capital	Disclosure required under PIT Regulations	Paid up Capital
Holding before transaction as on 14/10/2009			8875000	30.82		28793901
12/10/2009	Right Issue	21986099	30861099	42.88	13(3) r/w 13(5)	71963429
01/04/2011	Right Issue	31358123	62219222	59.44	13(3) r/w 13(5)	104667638
05/09/2012	Open Offer	14653470	76872692	73.44	Timely Disclosures made	104667638
23/05/2014	Amalgamation*	1584948	78457640	74.96	Not applicable	104667638

**The acquisition is pursuant to a scheme of amalgamation, which received approval of the Stock exchanges. Disclosure is not applicable as scheme of amalgamation approved by High Court and required disclosure made as per Takeover Regulations.*

- 15.** Thus, it was alleged that the Noticee, by making the necessary disclosures to the target company with a delay, had violated the provisions of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations.

- 16.** Vide letter dated October 23, 2017, the Noticee submitted its detailed reply to the SCN. The Noticee submitted that the allotment of equity shares in the Rights Issue was made by the Target Company on October 12, 2009 and upon such allotment, the shareholding of the Noticee in the Target Company had increased from 88,75,000 equity shares representing 30.82% of the equity share capital of the target company to 3,08,61,099 equity shares representing 42.88% of the equity share capital of the target company. The Noticee stated that this allotment was notified by the Target Company to the stock exchanges on October 14, 2009 i.e. within 2 (two) working days of the date of allotment while applying for listing of

the securities. With respect to the disclosure requirement under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations, the Noticee submitted that inadvertently the prescribed technical disclosures under the said regulations were made belatedly i.e. on July 02, 2012, resulting in a delay of 992 days (*due date of compliance being October 14, 2009*). The Noticee further submitted that the information regarding the shares and change in shareholding pattern was not only disclosed in the Letter of Offer, but also detailed by the target company to both the stock exchanges vide letters dated October 14, 2009. Further, related disclosures of the shareholding of the Noticee were also made by the target company under Clause 35 of the SEBI Listing Agreement, which required companies to make quarterly disclosures of, inter alia, its shareholding pattern.

- 17.** The Noticee further stated that subsequently, on April 01, 2011, the Target Company had allotted 3,13,58,123 equity shares to the Noticee upon conversion of 1,72,46,968 FCDs allotted pursuant to the Rights Issue and in terms of the Letter of Offer. As a result, its shareholding in the target company had increased from 3,08,61,099 equity shares representing 42.88% of the equity share capital of the target company to 6,22,19,222 equity shares representing 59.44% of the equity share capital of the target company. With respect to the disclosure requirement under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations, the Noticee submitted that the Noticee was required to make the necessary disclosures as prescribed under the said regulations on April 03, 2011. However, admittedly, the Noticee had made the said disclosures on May 13, 2011 resulting in a delay of 39 days. However, it is the case of the Noticee that the other disclosures in respect of the fact of allotment of shares on conversion of FCDs, increase in the shareholding of the Noticee in the Target Company, the target company becoming subsidiary of the Noticee were made by both, the Noticee as well as the target company, vide their respective letters dated April 01, 2011 to both the exchanges and thus, the alleged non-disclosure of information was in fact available within public domain as on April 01, 2011. The Noticee further submitted that the related disclosures of the shareholding of the Noticee were also already made as per Clause 35 of the Listing Agreement while applying for listing of securities on April 04, 2011. Further, quarterly shareholding disclosure under Clause 35 of the Listing Agreement after conversion of the

FCDs into equity shares were first made vide Target Company's letter dated July 11, 2011 for the quarter ended June 30, 2011.

18. Further, the Noticee submitted that there was no actual or effective breach of the disclosure requirements under Regulation 13(3) of the PIT Regulations as the underlying purpose of the said Regulations was fulfilled by virtue of the information being present in the public domain by way of compliance with other applicable statutes by the Noticee and the target company. Thus, it is the case of the Noticee that a formal application for disclosure under the extant PIT Regulations was merely a formality, in absence of which no irreparable harm or injury has been occurred either to the investors or to the public at large dealing in securities. The Noticee stated that the alleged violations were technical in nature. Therefore, the said alleged violations can be dealt with administratively / cautionary advice and does not require imposition of any penalty under the SEBI Act, 1992.
19. Vide letter dated November 29, 2017, the Noticee submitted its additional reply in the matter. The Noticee reiterated the submissions made by it in its earlier reply and further has relied upon various case laws suggesting that the lapse on the part of the Noticee was technical in nature and the same should be condoned or a nominal penalty may be imposed on it.
20. From the foregoing, I find that the Noticee has admitted the violation of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations by making the prescribed disclosures with a delay on the both the occasions. Further, I do not find any merit in the submissions of the Noticee that no irreparable harm or injury has been occurred either to the investors or to the public at large dealing in securities due to the said delayed disclosures. In this context, I note that ***the Hon'ble Securities Appellate Tribunal in the matter of Komal Nahata Vs. SEBI vide order dated January 27, 2014*** has, inter-alia, observed that: *"Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of*

SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure.”

21. I don't find merit in the contentions of the Noticee that the target company had made the disclosures under Clause 35 of the listing Agreement disclosing the shareholding pattern in the matter. The provisions of the Listing Agreement are applicable to the listed company. I am of the view that compliance of Clause 35 of the listing agreement cannot be a ground for non compliance of the provisions of the PIT Regulations inasmuch as the pith and substance of the both the provisions of law is different and distinguishable. The applicability of one does not preclude the applicability of another. I note that specific obligation is cast upon the Noticee to make the disclosures to the target company under the PIT Regulations. I further find that even if certain disclosures were made by the Noticee and the target company with respect to the Rights Issue and the FCDs (which were required to be made under some other provisions of law), the same does not absolve the Noticee from its statutory obligation to make timely disclosures of its shareholding in prescribed format under the relevant PIT Regulations. Thus, the said submission of the Noticee is devoid of any merit and the same is untenable.

22. In view of the above, I conclude that the Noticee, admittedly, by making the disclosures with a delay, has violated Regulation 13(3) read with Regulation 13(5) of the PIT Regulations and thus, liable for imposition of monetary penalty under Section 15A(b) of the SEBI Act, 1992 which reads as under:

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(a)

(b) *to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

23. The Hon'ble Securities Appellate Tribunal, ***in Appeal No.66 of 2003 order dated April 15, 2005 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI***, has also, *inter-alia*, observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature"*.

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

25. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 which reads as under:-

15J-Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, 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 removal of doubts, it is clarified that the power of an adjudicating officer 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.*

26. I observe from the material available on record that any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. I note that the defaults of the Noticee are repetitive in nature. I note that the Regulations seek to achieve fair treatment by, *inter alia*, mandating disclosure of timely and adequate information

to enable investors to make an informed decision. Therefore, correct and timely disclosures play an essential part of the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed decision. Adherence to regulatory frame work is a sine qua non for the healthy growth and safety of the securities market. I, therefore, conclude that the Noticee, by failing to make the necessary disclosures within the prescribed time lines as required under the PIT Regulations, is liable for monetary penalty under the SEBI Act, 1992.

ORDER

27. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of ` 10,00,000/- (Rupees Ten Lakh Only) under Section 15A(b) of the SEBI Act, 1992 on the Noticee viz. Tata Steel Limited in the matter. In my view, the aforesaid penalty is commensurate with the defaults committed by the Noticee.

28. The amount of penalty shall be paid either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to "The Division Chief (Enforcement Department - DRA-I), Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052."

1.	Case Name :	
2.	Name of Payee:	
3.	Date of Payment:	
4.	Amount Paid:	
5.	Transaction No:	

6.	Bank details in which payments is made :	
7.	Payment is made for: (like penalties/ disgorgement / recovery/ settlement amount and legal charges along with order details)	

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

Date: December 07, 2017
Place: Mumbai

D.SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER