

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/KS/AA/AO/50-62/2017-18]

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

1. **Shri Shailesh Agarwal (PAN:AFZPA0666G)**
2. **Shri Balmukund Kumar (PAN:ASYPK4937C)**
3. **Shri Hitesh Bhutla (PAN:AKGPA9332H)**
4. **M/s Sterlite Metal Rolling Mills Pvt. Ltd. (PAN:AAECS6358N)**
5. **Shri Ajay Kumar (PAN: AOIPK8949N)**
6. **Shri C. S. Raha (PAN: ADFPR6932A)**
7. **Shri Varun Agarwal (PAN:AFUPA5752J)**
8. **Shri Punnet Agarwal (PAN: AACCP7552M)**
9. **Shri Debratan Raha (PAN: ACEPK8493E)**
10. **Shri Sanwarmal Agarwal (PAN:ACMPA3952F)**
11. **Shri Subhash Patwari (PAN:AESPP9455Q)**
12. **Mrs. Radha Ballabh Agarwal (PAN:ADPPA2439M)**
13. **Shri K. K. Tiwari (PAN:AKGPB6976B)**

In the matter of Arun Varun Trade and Investment Limited

FACTS OF THE CASE

1. A Letter of Offer was filed by Shri Gautam Bhandari and Shri Jayanti Lal Bhandari to acquire up to 1,04,000 (One Lakh Four Thousand) equity shares of face value of Rs. 10/- each representing 26% of the voting equity share capital of Arun Varun Trade and Investments Limited (hereinafter referred to as '**AVTIL**/

Target Company'). The public announcement for the same was made on August 24, 2015 and the shares of the Company were listed on Bombay Stock Exchange Ltd. (hereinafter referred to as 'BSE').

2. While examining the Letter of Offer, Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed that Shri Shailesh Agarwal ('**Shailesh**'), Shri Balmukund Kumar ('**Balmukund**'), Shri Hitesh Bhutla ('**Hitesh**'), M/s Sterlite Metal Rolling Mills Pvt. Ltd. ('**Sterlite**'), Shri Ajay Kumar ('**Ajay**'), Shri C. S. Raha ('**CS**'), Shri Varun Agarwal ('**Varun**'), Shri Punnet Agarwal ('**Punnet**'), Shri Debratan Raha ('**Debratan**'), Shri Sanwarmal Agarwal ('**Sanwarmal**'), Shri Subhash Patwari ('**Subhash**'), Mrs. Radha Ballabh Agarwal ('**Radha**') and Shri K. K. Tiwari ('**KK**') in the past had violated the provisions of Regulation 7(1A) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations, 1997**'). The aforesaid entities are hereinafter collectively referred to as '**the Noticees**'.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Prasad Jagadale was appointed as the Adjudicating Officer vide order dated April 25, 2016 under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**') read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under Section 15A(b) of the SEBI Act, the violation of Regulation 7(1A) of the SAST Regulations, 1997 alleged to have been committed by the Noticees.
4. Pursuant to the transfer of Shri Prasad Jagadale, Shri Suresh Gupta was appointed as Adjudicating Officer. Thereafter, vide appointment order dated May

18, 2017, the proceedings were transferred to the undersigned which was intimated vide communique dated August 02, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice (hereinafter referred to as '**SCN**') dated August 18, 2017 was issued to the Noticees under Rule 4 of the Adjudication Rules communicating the alleged violations of the SAST Regulations, 1997. The Noticees were also called upon to show cause as to why an inquiry should not be initiated against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A(b) of the SEBI Act for the alleged contravention of SAST Regulations, 1997.
6. The details in respect of alleged violation by the Noticees are as given below:
 - a) It was observed that the Noticees were the erstwhile promoters of AVTIL and were collectively holding 60,000 shares representing 15% of the share capital of AVTIL. Subsequently, the Noticees collectively sold 58,000 shares representing 14.50% of the share capital of AVTIL on September 16, 2009.
 - b) In terms of Regulation 7(1A) of the SAST Regulations, 1997, any acquirer shall disclose purchase or sale aggregating two per cent or more of the share capital of any company to that company, and to the stock exchanges where shares of the company are listed. Such disclosure has to be made within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale. The Noticees were the erstwhile promoters of AVTIL. Regulation 7(1A) was triggered during the afore-mentioned sale of 14.50% of the share capital of AVTIL by the Noticees. It was alleged that the Noticees failed to make disclosures in respect of the aforesaid sale of shares under Regulation 7(1A) as below:

Sr. No.	Regulation / Sub - Regulation	Relevant Year	Date of Sale Transaction	Due date for compliance	Status of Compliance
1	7(1A) of SAST Regulations, 1997	2009-10	September 16, 2009	September 18, 2009	Not Complied

7. The SCN issued to the Noticees was dispatched via Registered Post Acknowledgement Due ('**RPAD**'). As per available postal records, the SCN was delivered to Shailesh, Balmukund, Hitesh, Varun, Punnet, Debratan, Subhash, Radha and KK while the SCN issued to Sterlite, Ajay, CS and Sanwarmal returned undelivered. No response in respect of the SCN was received from the Noticees to whom the SCN had been delivered. It was also observed from another adjudication proceeding before the undersigned that Varun had deceased and in view of the same, the matter became infructuous in so far as he was concerned.
8. Thereafter, a reminder cum hearing notice dated September 12, 2017 was issued to the Noticees advising them to submit their reply to the SCN by September 19, 2017 and were granted an opportunity of hearing on September 26, 2017. A copy of SCN was also enclosed with the said reminder cum hearing notice. However, as per available records, the aforesaid reminder cum hearing notices could not be delivered to all the Noticees except Subhash, Radha and KK. Further, nobody appeared for hearing on September 26, 2017. Subsequently, a reminder letter dated October 11, 2017 was sent to the Noticees along with copies of previous communications including the SCN advising them to submit their response to the SCN. However, the aforesaid reminder letter returned undelivered.
9. In view of the above, another reminder letter dated November 10, 2017 along with copies of previous communications including the SCN was issued to the

Noticees and was sent via RPAD and hand delivery. The said reminder letter was delivered at the addresses of Shailesh, Balmukund, Hitesh, Ajay, Debratan, Sanwarmal, Subhash, Radha and KK while it could not be delivered to Sterlite, Punnet and CS. Thereafter, an email dated November 27, 2017 was received from one Shri Prashant Babulal Pachisia stating that he was the Authorized Representative of the Noticees and enclosed a scanned copy of a letter dated November 27, 2017 as the reply to the SCN. However, it was observed that the name of Shailesh was not mentioned in the said reply. The physical copy of the said letter was also received subsequently. It was informed in the said letter dated November 27, 2017 that two of the Noticees- Varun and Debratan have deceased and their names be removed from the proceedings as the matter becomes infructuous in so far as they are concerned. In the said letter dated November 27, 2017, it was *inter alia* also submitted that:

“

- (a) *It is pertinent to note that SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 1997 ("SAST 1997 Regulations") is a dynamic law and the provision are detailed in multiple sections.*
- (b) *Noticees being layman were of the belief that SAST 1997 Regulations attracts only in case acquiring of 15% or more shares of the Company.*
- (c) *Further on read of Regulation 7 (1A) of SAST, 1997, Noticees interpreted that the disclosure under Regulation 7 (1A) of SAST, 1997 is required to be made by the "acquirer" and not by the seller of shares. Following are the basis of such interpretation:*
 - *The heading of Regulation 7 (1A) of SAST, 1997 states that it is for "Acquisition of 5 per cent and more shares or voting rights of a company", which as per general interpretation exclude sale transaction from its purview.*
 - *Further the initial word/line of Regulation 7 (1A) of SAST, 1997 commence from the word "Any acquirer" , which is consistence with title of Regulation 7 (1A) of*

SAST, 1997 and as per general interpretation exclude sale transaction from its purview.

- *Definition of acquirer as per SAST 1997 Regulations quoted below, excludes seller from its purview and refers only to acquirer of the securities.*

➤ *"acquirer" means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer*

(d) *Further, it is very important and pertinent to note that Regulation 7 (1A) of SAST, 1997, applies only if the shares or voting rights of the company is acquired under regulation 11 (1) of SAST 1997 Regulations. It is pertinent to note here that the Noticees have not acquired any Sale share under regulation 11 (1) of SAST 1997 Regulations, and hence disclosure if any, required by the seller under Regulation 7 (1A) of SAST, 1997 is not applicable to the said Sale transaction. In this regard we would further like to submit that as per annexure D of Notice which contains copy of document on shareholding of erstwhile promoter group submitted by M/s. Aryaman Financial Services Limited (herein after referred as "Merchant Banker to Open Offer"), it is apparent that Noticees were holding equity share of the Company prior to April 1, 1997 and the shareholding of the Noticees as per annexure D remained same till the date of Sale transaction i.e September 16, 2009. This clearly shows that the Noticees has not acquired any equity shares or voting rights under regulation 11 (1) of SAST 1997 Regulations.*

Citing below is relevant order passed by SEBI adjudicating officer upon which it is clear that Regulation 7 (1A) of SAST, 1997 is applied only if regulation 11 (1) of SAST 1997 Regulations is applied, Noticees has placed reliance on interpretation as stated in clause 3 of this Reply.

➤ *In the matter of M/s. Hydro S & S Industries Ltd. [ADJUDICATION ORDER NO. AK/A0- 101-104 /2015] dated October 29, 2015.*

- (e) *Further it is to be noted that the open offer letter dated October 15, 2015 has been prepared by the new promoter and their Merchant Banker to Open Offer, independently without any interference or confirmation from the Noticees, We the Noticees do not agree nor abide by any views or opinion of the Merchant Banker to Open Offer, and its merely an interpretation indifference of Regulation 7 (1A) of SAST, 1997, which has caused to stating in open offer letter a self-declaratory, violation by Noticees in the opinion of Merchant Banker to Open Offer.*
- (f) *Further while going through the Regulation 7 (1A) of SAST, 1997 we also believe that, it applies only to acquirer individually who sale or purchase 2% or more shares capital of the Company, and not as a group. Below are the justification/understanding upon which place reliance to form such view.*
- *SAST 1997 Regulations has whenever required to fetch acquirer along with person acting in concert under its purview, has specifically stated and being vocal on it, this as per literal interpretation rules means that wherever person acting in concert are to be clubbed with the acquirer, the same has been specifically mentioned. In Regulation 7 (1A) of SAST, 1997, the words "along with person acting in concert" is not mentioned after the word "acquirer" and hence the applicability of disclosure required to be made under Regulation 7 (1A) of SAST, 1997 is to be examined on the basis of sale or purchase of shares made by the acquirer alone.*
 - *Quoted below are few lists of regulations of SAST 1997 Regulations which specifically clubbed acquirer and person acting in concert together:*
 - *Regulation 11 (1), Regulation 11 (2), Regulation 11 (2A), Regulation 11 (3), Regulation 25 (3), Regulation 45 (2).*

Hence, Regulation 7 (1A) of SAST, 1997 Regulations does not specifically club acquirer and person acting in concern and it applies only to individual acquirer.
 - *Having such view being drawn it is pertinent to note here that Noticees, being considered to be responsible for disclosure shall be considered in its*

individual capacity and not to be clubbed with person acting in concert. In the present case except notice no. M/s. Sterlite Metal Rolling Mills Pvt. Ltd., none of the other Noticees has sold 2% or more share of the Company and hence the disclosure under Regulation 7 (1 A) of SAST, 1997 is not applicable to them.

- (g) Further, the Noticees being layman was of the belief that the complex SAST 1997 Regulations were only applicable to listed company, and while entering into Sale transaction, the Company was suspended from stock exchange.*
- (h) It is pertinent to note here that Noticees being the seller and had no role in drafting of open offer letter, nor did Noticees had look over to the open offer letter which kept Noticees being unaware of any un - willful and debatable stated violation.*
- (i) Further, alleged (un-willful and debatable) violation came to the knowledge of Noticees only upon receiving of Notice. We hereby state that the Noticees are law abiding citizens and have always intended to be on the right side of the law, accordingly, the Noticees hereby humbly submit that there has been no default in compliance with the spirit of SAST 1997 Regulations. Further it is pertinent to note here that there is no monetary loss caused to any investor and the alleged violation was been not acknowledged by investigation, and this was being voluntary disclosed, taking such concerns of Noticees in consideration, we would request your good selves to take lenient view and condone any alleged violation.*
- (j) Further the alleged violation of informative disclosure does not affect or has not caused loss to any investors or public. And it is just a reporting requirement rather than any responsive disclosure.”*

10. Subsequently, a letter dated November 30, 2017 was received from Ms. Aparajita Pal, daughter of Shri Debratan Raha, informing the demise of her father. Copies of certificate issued by Subarnarekha Burning Ghat, Jamshedpur and attending physician Dr. Vinay Ranjan were also enclosed with the said letter. Thereafter, the Authorized Representative Shri Prashant

Babulal Pachisia submitted scanned copy of a revised reply dated December 06, 2017 vide email dated December 08, 2017. The name of Shailesh was added to the reply to SCN submitted earlier. There were no further changes in the submissions made earlier vide letter dated November 27, 2017. Scanned copies of Power of Attorney by the Noticees to Shri Prashant Babulal Pachisia for representing them in the present proceedings were also enclosed.

11. In the interest of natural justice, an opportunity of hearing was provided to the Noticees on December 26, 2017 vide hearing notice dated December 13, 2017. Shri Umesh Lakhani, Company Secretary and Shri Karan Thakker, who were authorized by Shri Prashant Babulal Pachisia, appeared on behalf of the Noticees in the hearing on December 26, 2017. Shri Umesh Lakhani and Shri Karan Thakker reiterated the submissions given in the replies to the SCN dated November 27, 2017 and December 06, 2017 and sought no further hearing in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have carefully perused the written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :
 - a) Whether the Noticees had violated the provisions of Regulation 7(1A) of the SAST Regulations, 1997?
 - b) Does the violations, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?
 - c) If yes, what should be the quantum of penalty?
13. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations, 1997 which read as under:-

SAST REGULATIONS, 1997

Acquisition of 5 per cent and more shares or voting rights of a company¹

7...

(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

...

14. As the provisions of Regulation 7(1A) refers to provisions of Regulation 11(1) of SAST Regulations, 1997, it will be appropriate to refer to the said Regulation as well. The provisions of Regulation 11(1) of SAST read as under:¹

(11)(1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5 per cent of the voting rights, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

15. Upon perusal of submissions of the Noticees and documents available on record, I find that the Noticees were collectively holding 60,000 equity shares representing 15.00% of the share capital of AVTIL. On September 16, 2009, the Noticees collectively sold 58,000 shares representing 14.50% of the share capital of AVTIL. I also note that the Noticees were the erstwhile promoters of AVTIL. In view of the same, it was alleged that the Noticees were required disclose the aforesaid sale of shares to AVTIL and the stock exchange where

¹ Provision as existing at the time of the impugned transaction

AVTIL was listed (i.e., BSE) under Regulation 7(1A) of the SAST Regulations, 1997, which they failed to do.

16. I note that in the replies dated November 27, 2017 and December 06, 2017 on behalf of the Noticees, it had been informed that Shri Varun Agarwal and Shri Debratan Raha have deceased. The copies of certificates in respect of deaths of Shri Varun Agarwal and Shri Debratan Raha have also been placed on record. It is noted from the death certificate of Shri Varun Agarwal that the date of death was April 30, 2007 which was before the sale of the aforesaid shares in the Target Company. Here, I note that in *Girijandini vs. Bijendra Narain* (AIR 1967 SC 2110), the Hon'ble Supreme Court, *inter-alia*, observed that in case of personal action, i.e., the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases, the maxim *actio personalis moritur cum persona* (personal action dies with the death of the person) would apply.
17. In view of the above, the adjudication proceeding against Shri Varun Agarwal and Shri Debratan Raha is liable to be abated without going into the merits of the case. The matter in respect of Shri Varun Agarwal and Shri Debratan Raha is accordingly disposed of.
18. The first issue for consideration is whether the Noticees were required to disclose the aforesaid sale of shares to AVTIL and BSE under Regulation 7(1A) of SAST Regulations, 1997 and whether they have violated the provisions of Regulation 7(1A) of SAST Regulations, 1997 by not disclosing the aforesaid sale of shares to AVTIL and BSE. In this respect, I note the Noticees in their replies have stated that the definition of "acquirer" as per the SAST Regulations, 1997 excludes seller from its purview and as the Regulation 7(1A) of SAST Regulations, 1997 commence from the word "Any acquirer", they

exclude sale transaction from its purview. In this respect, I note that Regulation 7(1A) unequivocally states that any “acquirer” who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11 shall disclose purchase or sale (emphasis supplied) aggregating two per cent or more of the share capital. Thus, it is clear that disclosure of sale transactions is also envisaged under Regulation 7(1A). In view of the same, I find that the said contention of the Noticees is not acceptable.

19. I observe that the Noticees have submitted that the Regulation 7(1A) is applicable only when the shares or voting rights of a company are acquired under Regulation 11(1) of SAST Regulations, 1997 and that the Noticees had not acquired the shares or voting rights under Regulation 11(1) of SAST Regulations, 1997. Further, I note that the Noticees have also submitted that the Regulation 7(1A) is applicable only to individual acquirer who sells or purchases 2% or more share capital of a company and not as a group/ persons acting in concert. The Noticees have also referred to the Adjudication Order in the matter of M/s Hydro S & S Industries Limited. However, I note that the facts of the said matter are different from the facts of the present proceedings. Further, I observe that Hon'ble Securities Appellate Tribunal ('SAT') in the matter of *Ravi Mohan & Ors. Vs SEBI (Appeal No. 97 of 2014, date of decision: December 16, 2015)* *inter alia* observed that:

“....expression ‘acquirer’ defined under regulation 2(1)(e) stipulates that wherever the expression ‘acquirer’ is used in the Takeover Regulations, 1997 it shall be referable to a person who acquires shares or voting rights in the target company either by himself or with any person acting in concert with the acquirer. Therefore, purchase or sale of shares by ‘Any acquirer’ under regulation 7(1A) would be referable to purchase or sale of shares effected by the acquirer either by himself or with persons acting in concert with the acquirer and would not be relatable to purchase or sale of shares by the acquirer alone as contended by the appellants...

.....

Once the regulation defines the expression 'acquirer' under regulation 2(1)(b) of the Takeover Regulations to mean a person who has acquired shares or voting rights of the target company either by himself or with any person acting in concert with the acquirer then, that meaning has to be assigned to the expression 'acquirer' wherever used in the Takeover Regulation, 1997. Therefore, it would be just and proper to hold that the expression 'acquirer' in regulation 7(1A) is referable to a person who has acquired shares of the target company either by himself or with the persons acting in concert with him. Even after defining the expression 'acquirer', fact that in some regulations the expression 'acquirer' is used and in some regulations the expression 'acquirer' together with persons acting in concert' is used, it cannot be presumed that in regulation 7(1A) the expression 'acquirer' is referable to a person holding shares of the target company individually. In other words, whether the expression 'acquirer' is followed by the words 'together with persons acting in concert' or not, the said expression used in regulation 7(1A), would be referable to purchase or sale of shares by the acquirer either by himself or with persons acting in concert with the acquirer...

....

Argument of the appellants that they have not acquired shares of the target company under regulation 11(1) and hence regulation 7(1A) is not attracted is without any merit, because, regulation 11(1) does not prescribe any particular mode of acquiring shares but merely refers to acquisition of 15% or more but less than 55% of the shares by an acquirer together with persons acting in concert with him in accordance with the provisions of law. By referring to an 'acquirer' covered under regulation 11(1) in regulation 7(1A), it is made clear that an acquirer covered under regulation 11(1) i.e. an acquirer (either by himself or together with persons acting in concert with him) holding 15% or more but less than 55% shares of the target company when either by himself or together with persons acting in concert with him purchases or sells shares of the target company aggregating 2% or more of the share capital of the target company, then such acquirer shall make disclosure as provided under regulation

7(1A). Fact that the appellants in all these appeals held shares of the target company more than 15% but less than 55% in accordance with law as stipulated under regulation 11(1) is not in dispute. Therefore, appellants holding shares of the target company to the extent specified under regulation 11(1), when sold shares of the target company as persons acting in concert in excess of 2% of the share capital of the target company, were obliged to make disclosure under regulation 7(1A)."

20. In view of the above, I find that the Noticees had the obligation to make disclosure under Regulation 7(1A) of SAST Regulations, 1997 when they collectively sold shares representing 14.50% of share capital of AVTIL. Further, I also note from the above observations of the Hon'ble SAT that disclosure under Regulation 7(1A) is applicable for any acquirer including persons acting in concert. By failing to make the requisite disclosures, I find that the Noticees have violated the provisions of Regulation 7(1A) of SAST Regulations, 1997. The Noticees in their submissions have also stated that the above non-disclosure does not affect or has not caused any loss to any investors or public. In this respect, I note that the Hon'ble SAT in the matter of *Komal Nahata Vs. SEBI* (Date of judgment- January 27, 2014) has 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. In view of the foregoing, I find that the allegation of violation of Regulation 7(1A) of the SAST Regulations, 1997 against the Noticees is established. At this juncture, it is noteworthy to quote the observations of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shriram Mutual Fund* [2006] 68 SCL 216(SC) 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....". Further, in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed that "Once it is established that the mandatory provisions of takeover code was violated the penalty must follow".

22. In view of the above, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:

"Penalty for failure to furnish information, return, etc.²

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

...

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor 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. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:

"Factors to be taken into account by the adjudicating officer.

Section 15J - *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;

² Section 15A(b) as existing at the time of commission of alleged violation

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 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.”

24. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss, if any, to the investors on account of default by the Noticees. I also note from the documents available on record that the violations reported are not of repetitive nature.

ORDER

25. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 5,00,000 (Rupees Five Lakh only) on the Noticees viz. Shri Shailesh Agarwal , Shri Balmukund Kumar, Shri Hitesh Bhutla, M/s Sterlite Metal Rolling Mills Pvt. Ltd., Shri Ajay Kumar, Shri C. S. Raha, Shri Punnet Agarwal, Shri Sanwarmal Agarwal, Shri Subhash Patwari, Mrs. Radha Ballabh Agarwal and Shri K. K. Tiwari under the provisions of Section 15A(b) of the SEBI Act. The amount of the penalty shall be payable jointly and severally by the Noticees. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

26. The amount of penalty shall be paid either by way of demand draft in favour 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.
27. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief, Enforcement Department (EFD1-DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.”

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)	

28. The adjudication proceeding in respect of Shri Varun Agarwal and Shri Debratan Raha is disposed of as the said persons have passed away.
29. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Shri Shailesh Agarwal, Shri Balmukund Kumar, Shri Hitesh Bhutla, M/s Sterlite Metal Rolling Mills Pvt. Ltd., Shri Ajay

Kumar, Shri C. S. Raha, Shri Punnet Agarwal, Shri Sanwarmal Agarwal, Shri Subhash Patwari, Mrs. Radha Ballabh Agarwal and Shri K. K. Tiwari and also to the Securities and Exchange Board of India.

Date: December 27, 2017

Place: Mumbai

**K SARAVANAN
GENERAL MANAGER &
ADJUDICATING OFFICER**