

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. AK/AO-42-43/2017]**

**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

**Mr. Hitesh Bhutla (PAN: AKGPA9332H)  
M/s Sterlite Metal Rolling Mills Pvt. Ltd. (PAN: AAEC6358N)**

In the matter of

Pankaj Piyush Trade and Investments Ltd.

**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a letter of offer in compliance with Regulation 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 made by Mr. Vinod Kumar Bansal (Acquirer) to acquire 1,04,000 fully paid equity shares of Rs. 10/- each (representing 26.00% of the paid up equity share capital/voting rights) of Pankaj Piyush Trade and Investment Ltd. (hereinafter referred to as the '**the Company/ PPTIL**') at an offer price of Rs 34/-. The Public Announcement of the same was made on January 31, 2012 and the shares of the Company were listed on Bombay Stock Exchange Ltd. (hereinafter referred to as "**BSE**") at the relevant time.
2. On perusal of the letter of offer, the following was *inter alia* observed:
  - i. That Mr. Hitesh Bhutla, the erstwhile promoter entity had failed to comply with Regulation 7(1A) read with 7(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**Takeover Regulations, 1997**') in the year 2005, and;

- ii. That Sterlite Metal Rolling Mills Pvt. Ltd., the erstwhile promoter entity, had failed to comply with Regulations 7(1) read with Regulation 7(2) and Regulation 12 read with Regulation 14 of the Takeover Regulations, 1997 in the year 2005.
3. Based on the aforesaid information with respect to non-compliance of Takeover Regulations 1997, adjudication proceedings under Chapter VI-A of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') were initiated *inter alia* under Section 15A(b) of the SEBI Act against Mr. Hitesh Bhutla (hereinafter referred to as '**Hitesh**') and under Section 15 A(b) and Section 15H(ii) of SEBI Act against Sterlite Metal Rolling Private Limited. (hereinafter referred to as '**Sterlite**') (hereinafter collectively referred to as '**the Noticees**').

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. The undersigned was appointed as Adjudicating Officer vide order dated August 16, 2013 under Section 15 I of SEBI Act and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to inquire into and adjudge under Section 15A(b) and/or Section 15H(ii) of SEBI Act, as applicable, against the Noticees for the alleged violations of Takeover Regulations, 1997.

#### **SHOW CAUSE NOTICE, HEARING AND REPLY**

5. Show Cause Notices (hereinafter referred to as **SCN**) No. EAD-6/AK/RSL/3355/2014 and EAD-6/AK/RSL/3352/2014 dated January 30, 2014 were issued to the Noticees Hitesh and Sterlite under rule 4 of the Rules communicating the alleged violation of the provisions of the Takeover Regulations 1997.
6. The SCN issued to Noticee Hitesh *inter alia* observed that on April 02, 2005, the erstwhile promoter entity Hitesh, who was a part of the then promoter group, had sold 12.50% of shares from his shareholding of 13.13% in the company. As there was a change of more than 2% in the shareholding, Noticee Hitesh was required to make the necessary disclosure under Regulation 7(1A) of the Takeover Regulations, 1997, however, he failed to make such disclosure. SCN, thus,

alleged that Noticee Hitesh had failed to comply with Regulation 7(1A) read with 7(2) of the Takeover Regulations, 1997.

7. Further, the SCN issued to the Noticee Sterlite observed that on April 02, 2005, Noticee Sterlite had acquired 23,050 shares constituting 5.76% of the shares of the company through off-market purchase and became a part of the promoter group. The SCN pointed out that the total shareholding of the promoter group after the said transaction culminated to 14.50% (8.74%+5.76%) with the Noticee Sterlite holding the highest percentage of shareholding among the promoter group entities. Pursuant to acquisition of shares of the Company, Noticee Sterlite became a part of the promoter group & held the highest percentage of shares among the promoter group entities. Hence, SCN alleged that it amounted to change in control, as such, Noticee Sterlite was required to make a public announcement as required under Regulation 12 read with Regulation 14 of the Takeover Regulations, 1997, however, Noticee Sterlite failed to make an open offer, thereby violating Regulation 12 read with Regulation 14 of Takeover Regulations, 1997. It was further observed that since the Noticee Sterlite's shareholding crossed 5% pursuant to the aforesaid acquisition, Noticee Sterlite was also required to make necessary disclosures as prescribed under Regulation 7(1) of the Takeover Regulations, 1997 within two days of such acquisition, however, Noticee Sterlite did not make any disclosure in this regard. The SCN, thus, alleged that Noticee Sterlite violated Regulation 12 read with Regulation 14 of Takeover Regulations, 1997 and Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations, 1997. The relevant pages from the letter of offer showing the change in shareholding of the Noticees were provided with the respective SCNs.
8. The Noticees were called upon to show cause as to why an inquiry should not be initiated against them and penalty be not imposed under 15A(b) and/or 15H(ii) of SEBI Act, as applicable to the Noticees, for the alleged violations against them.
9. The Noticee Hitesh vide letter dated June 19, 2014 requested to condone the delay in filing his submission to the SCN as he was out of station for three months. Further, while requesting to take a lenient view in the matter, the Noticee Hitesh *inter alia* submitted as follows:

- i. That he was one of the promoters of the company and had sold 50,000 shares on April 02, 2005 by way of an off market transaction, of which 23,050 shares were sold to Sterlite;*
  - ii. That since the shares of the company were suspended and there was no trading in the scrip, and further since it was only a sale transaction, he did not make any disclosure to the stock exchange;*
  - iii. That there was no malafide intention and he did not gain anything in any manner by virtue of the said transaction. Also that the shares were sold at their face value.*
- 10. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, Noticee Hitesh was granted an opportunity of personal hearing on July 11, 2014 vide hearing notices dated July 01, 2014. The hearing notice was sent by registered post at the address of Noticee Hitesh. The said hearing notice was delivered and acknowledged, however, Noticee Hitesh failed to appear for the personal hearing. The Noticee Hitesh was granted further opportunities of hearing on September 09, 2014, March 13, 2015 and March 16, 2016 vide hearing notices dated August 26, 2014, March 02, 2015 and March 03, 2016 respectively. The hearing notices were delivered and acknowledged, however, Noticee Hitesh failed to avail the opportunities of hearing granted to him.
- 11. Further, in the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, Noticee Sterlite was also granted an opportunity of personal hearing on July 18, 2014 vide hearing notice dated July 08, 2014 and advised to submit its reply to the SCN by July 15, 2014. The hearing notice was affixed at the address of Noticee Sterlite as the office was locked. Vide email dated July 21, 2014, Noticee Sterlite stated that due to shifting of their office they were not able to receive the notice on time, hence, requested that the matter be adjourned for two weeks. Accordingly, another opportunity of hearing was granted on August 04, 2014, vide hearing notice dated July 22, 2014 and Noticee Sterlite was advised to submit its reply to the SCN by August 04, 2014. In response, vide email dated August 01, 2014, Noticee Sterlite sought another three weeks time and intimated that the Board had appointed Ms. Shailashri Bhaskar and Mr. Bharat Vyas as their authorized representatives to represent in the matter. Hence vide hearing notice dated August 26, 2014, Noticee Sterlite was granted an opportunity of hearing on September 09, 2014 in the matter and was advised to make submissions by September 05, 2014. Vide letter dated September 09, 2014, Noticee Sterlite sought another adjournment for three weeks due to the

illness of one of its directors. Accordingly, another opportunity of hearing was granted in the matter on September 30, 2014 vide hearing notice dated September 09, 2014 and Noticee Sterlite was advised to make submissions by September 15, 2014.

12. Vide reply dated September 26, 2014, Noticee Sterlite *inter alia* submitted as follows:

- i. *That the Letter of Offer (hereinafter referred to as 'LOO') from which the instant notice emanates does not relate to Noticee Sterlite, as the shares of the company as held by it along with the promoter group entities of the company were sold to Mr. Rasiklal Shah in the year 2008. Further, that Mr. Vinod Kumar Bansal neither consulted the erstwhile promoters, nor, gathered any confirmation regarding the disclosures made in the impugned LOO;*
- ii. *That the company was incorporated in the year 1982 with an objective to advance loans and make investments in the stock markets. It made a public issue in the year 1982-83 and listed its equity shares on BSE. However, its shares were suspended by BSE in the year 2003, as it failed to comply with the various provisions of listing agreement due to severe financial difficulties;*
- iii. *That Noticee Sterlite became the shareholder of the company in the year 2005 by acquiring 23,050 shares from Mr. Hitesh Bhulta, the cousin of Mr. D P Agarwal who is its director. Also that the shares were acquired by Noticee Sterlite through an off market purchase with the sole objective to guide the company in its revival and to ensure that it could invest its surplus funds and become profitable once again. Further that by no stretch of imagination, Noticee Sterlite intended to become majority shareholder or part of the promoter group or acquire control as alleged in the SCN;*
- iv. *That it is a well known fact that in any company which is managed by the Board, it is the directors who are in control. Further, that Noticee Sterlite did not nominate any of its directors or promoters on the Board of the company to exercise any sort of control whatsoever. Also, that if at all it is argued that Noticee Sterlite was in control of the management or policy decisions of the company, then the basis of such argument needs to be clarified as it is a known fact that generally the policy decisions are taken by virtue of shareholding or voting rights or by way of shareholder or voting agreements which in a way confers management rights. That no such shareholder or any other agreements*

*conferring any sort of management rights on Noticee Sterlite exists whatsoever, so as to proclaim that Noticee Sterlite had the ability to control the company;*

- v. That the total shares held by the promoters of the company as on April 01, 2005 were 84,950 shares, constituting 21.24% of the share capital, which has been wrongly referred to and stated as 34,950 shares constituting 8.74% of the share capital in Para no.3 of the SCN. Notwithstanding the same, the company had 11 promoters out of which Hitesh was the majority shareholder holding 52,500 shares constituting 13.13% of the share capital. Further on April 02, 2005, Hitesh sold 50,000 shares and Noticee Sterlite acquired 23,050 shares constituting 5.76% of the share capital through an off market purchase;*
- vi. That merely by acquiring the shares from the majority shareholder does not render the acquirer as a majority shareholder, in the absence of any agreement in this regard. Further, the promoters including Hitesh had been exercising control over the company jointly since its incorporation, and the offloading of part of shares by Hitesh did not result in change of control whatsoever. That rather the remaining shareholders continued to remain the majority shareholders of the company with a joint stake of 8.74% of the share capital and were still in control of the management of the company, in absence of any agreement granting control to Noticee Sterlite. Further that with a mere holding of 5.76%, Noticee Sterlite was not even in a position to pass any matter by way of Ordinary Resolution in a duly convened meeting of the shareholders, far less exercise control over the day to day affairs or management of the company;*
- vii. That reliance may be placed on decision of the Hon'ble SAT in the case of Shubhkam Ventures wherein it had opined that to acquire control would be to acquire "effective control". In this regard, it is pertinent to note that by no stretch of imagination it could be construed that a person with a shareholding of merely 5.76% of share capital, with no nominee on Board of Directors and in the absence of any shareholder or voting agreement conferring any special powers to appoint directors or to constitute quorum or to have veto powers on any resolution or to have powers to pass Ordinary Resolution, can exercise effective control;*
- viii. That Noticee Sterlite had not acquired any control over the company as alleged in the SCN and that in the absence of any confirmation from Noticee Sterlite in this regard, the LOO*

*to the extent it states that Noticee Sterlite had acquired control under Regulation 12 of the Takeover Regulations, 1997 is factually and principally incorrect;*

- ix. That in so far as it pertains to non disclosure of acquisition under Regulation 7(1) of the Takeover Regulations, 1997, it has been submitted that it did not make the said disclosure out of ignorance of law/ inadvertence, since it was of the opinion that as the shares of the company were suspended by BSE, disclosure would not be disseminated by the Exchange to the investors / shareholders, hence the said disclosure may not be required;*
- x. That considering the fact that the share capital of the company was only Rs.40 lacs, further that the number of shareholders were only around 50 and that the shares were suspended, a lenient view may be taken in the matter.*

- 13. Ms. Shailashri Bhaskar and Mr. Bharat Vyas appeared as Authorized Representatives (**ARs**) on behalf of Noticee Sterlite for the hearing on September 30, 2014 and reiterated the submissions made vide letter dated September 26, 2014. The ARs were advised to submit copy of the Annual Reports of Sterlite and Annual Reports of the Company for the Financial Years 2004-05, 2005-06, 2006-07 and 2007-08 and also the details of the directors of Sterlite during the period 2004-05 to 2007-08. The ARs were also advised to provide copies of the filings made under Regulation 7(1), if any. Further, the ARs were advised to provide a copy of the agreement, in case the shares were purchased pursuant to an agreement, price at which the shares were acquired, date when the funds were received/ transferred, date when the securities were actually received/ transferred, etc.
- 14. Noticee Sterlite vide its letter dated October 13, 2014 stated that since the details sought were pertaining to FY 2004-05, they may be granted 15 days more time to submit the details. The said request was acceded to vide email dated October 17, 2014.
- 15. Thereafter, vide letter dated October 27, 2014, Noticee Sterlite *inter alia* stated the following:
  - i. That the Annual Reports of Sterlite for the years 2004-2005, 2005-2006, 2006-2007 and 2007-2008 are enclosed;*
  - ii. That the Annual Reports of the company for the years 2004-05, 2005-06, 2006-07 and 2007-08 were not available with it, as they had disposed off old records relating to the company;*

- iii. *that they had not made any filing under Regulation 7(1) of the Takeover Regulations, 1997;*
- iv. *Further that the acquisition of 23,050 shares constituting 5.75% was an off market transaction and was not pursuant to any agreement;*
- v. *That the shares were acquired for a total consideration of Rs. 29,350/-;*
- vi. *That there were no outstanding of the parties from whom the shares were purchased. Also since the matter pertained to more than ten years, the documents had all been destroyed and they also did not have any proof of payment;*
- vii. *That the total pre and post shareholding of the Noticee Sterlite and other promoters is as below:*

<i>Name of the Acquirer</i>	<i>Pre-Shareholding</i>	<i>Post- Shareholding</i>
<i>Sterlite Metal Rolling Private Limited</i>	<i>0 (0.00%)</i>	<i>23,050 (5.76%)</i>
<i>Other Promoters</i>	<i>84,950 (21.24%)</i>	<i>34,950 (8.74%)</i>

16. On perusal of the Annual Reports as submitted by Sterlite, it was observed that only the “Directors Report to the Members” along with Auditors Report and Balance Sheet of Sterlite were submitted. Hence, vide email dated November 14, 2014, the Noticee Sterlite was requested to submit its complete Annual Report for the years 2004-2005, 2005-2006, 2006-2007 and 2007-2008. In response, Noticee Sterlite vide email dated November 14, 2014, however claimed that the full annual report was submitted by it vide its letter dated October 27, 2014.
17. Vide email dated March 27, 2015, Noticee Sterlite was further advised to submit a copy of the agreement, if any, by which it had acquired 5.75% of the shareholding constituting 23,050 shares for a total consideration of Rs. 29,350/- from Noticee Hitesh on April 02, 2005. The Noticee Sterlite was also advised to submit documentary evidence, if available, for the consideration paid of Rs. 29,350/- for acquisition of 23,050 shares.
18. Noticee Sterlite vide email dated April 28, 2015, while requesting to condone the non-filing of the documents called for, submitted that there is no copy of the agreement by which 5.75% of the shareholding constituting 23,050 equity shares for a total consideration of Rs. 29,350/- were acquired by it from Noticee Hitesh on April 02, 2005. Noticee Sterlite further submitted that there was no documentary evidence for the consideration paid, as the matter was more than ten years old.



19. It was noted that Noticee Sterlite had vide its submissions/replies dated September 26, 2014 and submissions made at the time of hearing held on September 30, 2014 *inter alia* stated that merely by acquiring 5.76% shares in the company and becoming a part of promoter group, it cannot be alleged that the Noticee had acquired control over the company. In view of the same, the alleged charge against Noticee Sterlite of triggering Regulation 12 read with Regulation 14 of the Takeover Regulations, 1997, by acquiring 23,050 shares (5.76%) of the company on April 02, 2005 and becoming a part of the promoter group, was further elaborated by issuing supplementary SCN dated November 17, 2015 in the matter.
20. Noticee Sterlite vide email dated December 03, 2015 sought fifteen days time to prepare all the required details in the matter. The said request was acceded to. Vide email dated December 16, 2015, Noticee Sterlite sought further adjournment of four weeks. Vide email of the same date, it was informed to Noticee Sterlite that its request for extension of time was acceded to. Vide further email dated January 04, 2016, Noticee Sterlite requested for six weeks time to make its submission to letter dated November 17, 2015 and also requested for another opportunity of personal hearing after the submissions were made. In response, it was again informed to Noticee Sterlite vide email dated January 05, 2016 that their request for extension of time was acceded to. Thereafter, email dated January 25, 2016 was received from Noticee Sterlite submitting that it had nothing further to add than what was already stated and clarified in their earlier submissions.
21. However, it was noted that Noticee Sterlite vide its email dated January 04, 2016 had requested for an opportunity of personal hearing. Hence, another opportunity of personal hearing was granted to Noticee Sterlite on March 16, 2016 vide hearing notice dated March 03, 2016. The Noticee Sterlite, however, failed to appear for the personal hearing. Vide letter dated April 11, 2016, Noticee Sterlite while reiterating its earlier submissions, made the following further submissions:
- *That since the company is not widely held by retail investors, there is no risk of hurting the interests of public at large, protecting which is the primary objective of SEBI;*
  - *That they never had any malafide intentions and were fully co-operative with the directives of SEBI;*

- *That even under Section 15H(ii) of SEBI Act, penalty mentioned is twenty five crore or three times of profit made, whichever is higher, which clearly shows that the intention of SEBI Act is to crack down on illegal or fraudulent Act and personal profiteering, which is purely absent from the instant case, which is only related to procedural lapse;*
- *That in their case they had not tried to earn undue profit at the expense of others. Further, even if it is considered a procedural lapse, they should not be subjected to penal provisions of the SEBI Act, which are meant for Criminal Acts under the Law. Reference was drawn to Hindustan Steel v. State of Orissa (AIR 1970 SC 253), wherein the broker had relied on an the observation made by the Hon'ble Supreme Court that "in a quasi-judicial criminal proceeding, penalty will not be ordinarily imposed unless the party had acted deliberately in defiance of law."*
- *That they were not in control of company at 14.5% stake, and as available on record they were not appointing any directors or managing the company indirectly as mentioned in Section 2(1)(c) of the Takeover Regulations, 1997 defining control;*
- *Also that the company had 11 promoters, out of which Mr. Hitesh Bhutla was the majority shareholder before it acquired for the first time 5.76% of shares of the Company.*

22. Vide hearing notice dated May 06, 2016, Noticee Sterlite was granted another opportunity of personal hearing on May 24, 2016. Vide email dated May 19, 2016, Noticee Sterlite sought an adjournment of 15 days due to sudden demise of one of its directors. Vide the said email, it was assured that they would appear for hearing at any date after June 10, 2016, with all the relevant documents in the matter. The request so made by Noticee Sterlite was acceded to and vide hearing notice dated June 13, 2016, it was granted another opportunity of hearing in the matter on June 24, 2016. Mr. Dev Kumar Verma and Mr. Bharat Vyas appeared on behalf of Noticee Sterlite and submitted that they do not have anything further to add, apart from what has already been submitted in the matter vide letter dated September 26, 2014, submission made at the hearing dated September 30, 2014, letter dated October 27, 2014, email dated January 25, 2016 and letter dated April 11, 2016.

23. During the course of the adjudication proceedings, the Hon'ble Supreme Court vide its Order dated November 26, 2015 in the matter of *SEBI v. Roofit Industries Ltd.* opined that the

Adjudicating Officer had no discretion under Section 15J in deciding the quantum of penalty for offences committed between 2002 and 2014, other for than penalty under Section 15F(a) and Section 15HB of the SEBI Act. However, subsequently, another Bench of the Hon'ble Supreme Court in the matter of *Siddharth Chaturvedi v. SEBI* vide Order dated March 14, 2016 stated that the matter deserved consideration at the hands of a larger Bench. Accordingly, the Supreme Court directed that the papers of these appeals be placed before the Hon'ble Chief Justice of India for placing these matters before a larger Bench. Hence, the current Adjudication proceedings were kept on hold until determination of the issue of applicability of Section 15J to Sections 15A(a), (b) and (c), 15B, 15C, 15D, 15E, 15F(b)& (c), 15G, 15H and 15HA of the SEBI Act, for offences committed between 2002 and 2014.

24. However, subsequent to the amendment made vide the Finance Act, 2017 to Section 15J of the SEBI Act, 1992 (notified on April 26, 2017), the following Explanation has been inserted in Section 15J:

*“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.”.*

25. Thus, it is now settled that Section 15J also applies to Sections 15A(a), (b) and (c), 15B, 15C, 15D, 15E, 15F(b)& (c), 15G, 15H and 15HA of the SEBI Act, for offences committed between 2002 and 2014.
26. Hence, the matter was proceeded with and the Noticees viz. Hitesh and Sterlite were afforded another opportunity of hearing on May 29, 2017 to make oral/ written submissions in the matter vide individual hearing notices dated April 26, 2017. The said hearing notices in respect of both the Noticees viz. Hitesh and Sterlite were affixed at their respective last known addresses. Also, the hearing notice of Noticee Sterlite was emailed at the email address of the ARs of Noticee Sterlite. However, the Noticees neither appeared for personal hearing, nor, filed any further reply/ written submissions in the matter.

27. Further, the details of transfers done between April 02, 2005 to January 31, 2012 in the scrip of the Company were called for from the Registrars Skyline Financial Services Pvt. Ltd. (hereinafter referred to as '**Skyline**'). Also, the Compliance Officer of Skyline was summoned to appear before the undersigned on July 11, 2017 with the originals of the transfer deeds based on which details of PPTIL shareholders who held shares as on April 02, 2005 and transferred shares from April 02, 2005 upto January 31, 2012 were provided.
28. Letter dated July 07, 2017 of Skyline along with the final and correct list of shareholders of as on April 01, 2005 and of transfers done between April 02, 2005 to January 31, 2012 in the scrip of PPTIL along with the certified copies of the transfer deeds provided therewith by Skyline were affixed at the address of Noticee Sterlite. Also, the minutes of the appearance of the Compliance Officer of Skyline on June 11, 2017 were affixed at the address of Noticee Sterlite. Noticee Sterlite was requested to give their comments, if any, by July 25, 2017. The said letter addressed to the Compliance Officer of Sterlite was also sent by email to the ARs who had represented in the matter on behalf of Sterlite. However, no comments have been received.
29. Further, it was observed that Intensive Fiscal Services Private Limited (hereinafter referred to as '**IFSPL**') were the Manager to the Open Offer made by Mr. Vinod Kumar Bansal to the shareholders of the Company in March 2012. It was brought out in the offer document therein that the promoters of the Company Sterlite Metal Rolling Mill Pvt. Ltd. had violated Regulation 12 of Takeover Regulations, 1997 due to acquisition of 23,050 shares constituting 5.76% of shares of the company through off-market purchase on April 02, 2005. In view thereof, IFSPL was requested to provide by May 30, 2017, the price at which Noticee Sterlite was required to make an open offer to the shareholders of the Company pursuant to acquisition of acquisition of 23,050 shares constituting 5.76% of shares of the company through off-market purchase on April 02, 2005 along with the supporting working in line with Takeover Regulations, 1997. IFSPL provided the details vide email dated May 30, 2017.

### **CONSIDERATION OF ISSUES**

30. I have carefully perused the written submissions made by Noticee Hitesh and Noticee Sterlite, the submissions put forth by Noticee Sterlite during the hearing and the documents available on record. I note that Noticee Hitesh has been given sufficient opportunities to present his case during the hearing and make further submission in the matter. As per rule 4(7) of the Rules, if any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Officer, the inquiry can be proceeded with in the absence of such person after recording the reasons therefor. Hence, the extant adjudication proceeding for Noticee Hitesh shall be proceeded on the basis of documents available on record and taking into consideration the written submission dated June 19, 2014 made by Noticee Hitesh in the matter.
31. The issues that arise for consideration in the present case are:
- i. Whether Noticee Hitesh had violated the provisions of Regulation 7 (1A) read with 7(2) of the Takeover Regulations, 1997 in the year 2005?
  - ii. Whether Noticee Sterlite had violated the provisions of Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations, 1997 in the year 2005?
  - iii. Further, whether Noticee Sterlite had violated the provisions of Regulation 12 read with Regulation 14 of Takeover Regulations, 1997 in the year 2005?
  - iv. Does the violation, if any, attract monetary penalty under Section 15 A(b) of SEBI Act against Noticee Hitesh?
  - v. Does the violation, if any, attract monetary penalty under Section 15 A(b) and 15 H(ii) of SEBI Act against Noticee Sterlite?
  - vi. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

### **FINDINGS**

32. Before moving forward, it is pertinent to refer to the provisions of Regulation 7(1), 7(1A) read with 7(2) and Regulation 12 read with Regulation 14 of the Takeover Regulations, 1997, which reads as under:

***Acquisition of 5 per cent and more shares or voting rights of a company.***

**7(1)** Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent [or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.]

**[(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.]

**(2)** The disclosures mentioned in sub-regulations (1) [and (1A)] shall be made within [two days] of,—

(a) the receipt of intimation of allotment of shares; or

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

**Acquisition of control over a company.**

**12.** Irrespective of whether or not there has been any acquisition of shares or voting rights in a company, no acquirer shall acquire control over the target company, unless such person makes a public announcement to acquire shares and acquires such shares in accordance with the regulations:

Provided that nothing contained herein shall apply to any change in control which takes place in pursuance to a [special resolution] passed by the shareholders in a general meeting :

Provided further that for passing of the special resolution facility of voting through postal ballot as specified under the Companies (Passing of the Resolutions by Postal Ballot) Rules, 2001 shall also be provided.]

*Explanation.—For the purposes of this regulation, acquisition shall include direct or indirect acquisition of control of target company by virtue of acquisition of companies, whether listed or unlisted and whether in India or abroad.*

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

**14 (3)** The public announcement referred to in regulation 12 shall be made by the merchant banker not later than four working days after any such change or changes are decided to be made as would result in the acquisition of control over the target company by the acquirer.

33. Before I proceed with the consideration of issues, I note that Noticee Sterlite had pointed out that the total shares held by the promoters of the Company on April 01, 2005 were 84,950 shares constituting 21.24% of the share capital, which were wrongly stated as 34,940 shares constituting

8.74% of the share capital in the SCN. I have perused the 'Date-wise Capital Build up' as provided at Para 5.9 of the letter of Offer and accept that the promoters of the target company on April 01, 2005 held 84,950 shares constituting 21.24% of the share capital as notified by Noticee Sterlite, and the promoter shareholding later changed to 34,940 shares constituting 8.74% of the share capital only on April 02, 2005.

34. With this in place, we will first examine the allegation of violation of Regulation 7(1A) read with Regulation 7(2) of the Takeover Regulations, 1997 against Noticee Hitesh and violation of Regulation 7(1) read with Regulation 7(2) of Takeover Regulations, 1997 against Noticee Sterlite.
35. Regulation 7(1A) 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 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. It is observed on perusal of the transaction details as given in the letter of Offer that Noticee Hitesh, who was a part of the promoter group, had sold 12.50% of shares from his shareholding of 13.13% in the company on April 02, 2005. Prior to the sale, the shareholding of the Promoter group stood at 21.24% and fell to 8.74% post the sale of shares. Since the cumulative holding of the promoters was between 15% and 55% of the paid-up capital of the company, it fell within the ambit of Regulation 11(1). The sale was of 12.50% of the shares of the company, hence disclosure ought to have been made by Noticee Hitesh under Regulation 7(1A) of Takeover Regulations, 1997. However, no disclosure was made by Noticee Hitesh with respect to the aforesaid sale of shares.
36. I find that in the matter Noticee Hitesh has submitted that since the shares of the company were suspended and there was no trading in the scrip and further that it was only a sale transaction, the Noticee did not make any disclosures to the stock exchange. I note here from a perusal of the letter of offer that the trading in equity shares of the Company was suspended by BSE w.e.f. April 30, 2003 due to non compliance of listing agreement. Further, the Company received in-principle approval from BSE for revocation of suspension in trading of equity shares of the Company vide its letter dated October 17, 2011. Thus, I note that it was due to delinquency on the part of the

Company which resulted in suspension of trading in Company's shares on BSE. The same cannot support the Noticee's case for non-disclosure under Regulation 7(1A) of Takeover Regulations, 1997. Further, I find that Regulation 7(1A) of Takeover Regulations, 1997 makes it specifically clear that purchase or sale aggregating two percent or more of the share capital of the company shall be disclosed, however, no disclosure has been made by Noticee Hitesh.

37. Also, as per Regulation 7(1) of the Takeover Regulations, 1997, any acquirer who acquires shares or voting rights, which taken together with shares or voting rights, if any, held by him, would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent, is required to disclose at every stage the aggregate of his shareholding to the company and to the stock exchanges. Regulation 7(2) states that the disclosures should be made within two days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be. I find that the Noticee Sterlite acquired 23,050 shares constituting 5.76% of shares of the company through off-market purchase and became part of the promoter group. Thus, since by the said acquisition, the Noticee Sterlite held more than 5% shares in the company, Noticee Sterlite was required to make the relevant disclosure under Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations, 1997 to the company and the Stock Exchanges where the shares of the company were listed, within two days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be. In the matter, I find that Noticee Sterlite has submitted that it did not make the said disclosure out of ignorance of law/inadvertence. Noticee Sterlite has stated that since the shares of the company were suspended by BSE, thus, the disclosure would not be disseminated by the Exchange to the investors/shareholders, hence, they felt that the said disclosure may not be required. I find that Noticee Sterlite has admitted that the non disclosure was out of ignorance of law/ inadvertence. Thus, it is established without doubt that the Noticee Sterlite has failed to make necessary disclosures under Regulation 7(1) read with 7(2) of Takeover Regulations, 1997.
38. I also note that the **Hon'ble SAT in Ashok Jain V. SEBI (Appeal no. 79 of 2014 decided on June 09, 2014)**, has observed that: "*..... Under SAST Regulations, 1997 as also under SAST Regulations, 2011, disclosures are liable to be made within specified days irrespective of the scrip being traded on the Exchange or not. Similarly, disclosures have to be made irrespective of whether investors*



*have suffered any loss or not on account of non disclosure within the time stipulated under those regulations...”* Hence, the contention put forth by Noticee Hitesh and Noticee Sterlite that the Company was suspended from the exchange and that the shares were not traded in the scrip cannot be accepted for the given case.

39. It is thus, established that ***Noticee Hitesh failed to comply with the provision of Regulation 7(1A) of Takeover Regulations, 1997 in the year 2005 and the Noticee Sterlite failed to comply with the provision of Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations, 1997 in the year 2005.***
40. Now the next issue for consideration is regarding the allegation against Noticee Sterlite for failure on its part to make a public announcement as required under Regulation 12 read with Regulation 14 of Takeover Regulations, 1997.
41. In the given case, Noticee Sterlite acquired 5.76% of the shares of the company and became a part of the promoter group of the company. Pursuant to the aforesaid acquisition, the shareholding of the promoter and the promoter group of the company increased from 8.74% to 14.50%. Noticee Sterlite also held the highest percentage of shareholding amongst the entities belonging to the promoter and promoter group of the company. As per Regulation 2(1)(h) of Takeover Regulations, 1997, ‘promoter’ *inter alia*, means any person who is in control of the target company.
42. It was alleged in the show cause notice that since Noticee Sterlite after acquiring 23,050 shares constituting 5.76% of shares of the company through off-market purchase and becoming a part of the promoter group, held the highest percentage of shareholding amongst the promoter group entities, it amounted to change in control. Therefore, Noticee Sterlite was required to make an open offer under Regulation 12 of the Takeover Regulations, 1997, not later than 4 working days as given under Regulation 14(3) of the Takeover Regulations, 1997, however, Noticee Sterlite failed to make an open offer.

43. In response, Noticee Sterlite *inter alia* stated that it did not nominate any of its directors or promoters on the Board of the company to exercise any sort of control whatsoever, that no shareholder or any other agreements conferring any sort of management rights on Noticee Sterlite exists whatsoever so as to proclaim that the Noticee Sterlite has the ability to control the company. It was *inter alia* further submitted therein that merely acquiring shares from the majority shareholder, does not render the acquirer as a majority shareholder. Also that seller had been exercising control over the company jointly since its incorporation, thus offloading of part of shares by the seller did not result in change in control. It was added that rather the remaining shareholders continued to remain the majority shareholders of the company with a joint stake of 8.74% and were in control of the company, in absence of any agreement granting control to Noticee Sterlite. It has *inter alia* also been pointed out that with a mere holding of 5.76%, Noticee Sterlite was not even in a position to pass any matter by way of Ordinary Resolution in a duly convened meeting of the shareholders, far less exercise control over the day to day affairs or the management of the company.
44. I note here that Noticee Sterlite has placed reliance on the decision of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') in the case of Shubhkam Ventures wherein SAT had opined that to acquire control would be to acquire "effective control".
45. In the matter, I note here that in the case of ***Subhkam Ventures (I) (P) Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated January 15, 2010*** has observed as follows:  
*"The test really is whether the acquirer is in the driving seat. To extend the metaphor further, the question would be whether he controls the steering, accelerator, the gears and the brakes. If the answers to these questions is in the affirmative, then alone would he be in control of the company. In other words, the question to be asked in each case would be whether the acquirer is the driving force behind the company and whether he is the one providing motion to the organization. If yes, he is in control but not otherwise. In short, control means effective control."*
46. With this in mind, let us now examine whether Noticee Sterlite in the facts and circumstances of the present case had acquired control of the company pursuant to acquisition of 23,050 shares constituting 5.76% of shares of the company through off-market purchase on April 02, 2005.

47. On perusal of the BSE website, it was observed that during the quarter ended March 2005, i.e. prior to acquisition of shares by Noticee Sterlite, the “Non-Promoter holding” consisted of 21 entities holding 78.76% of the share capital of the company. Consequent immediately upon acquisition of the shares of the Company by Noticee Sterlite on April 02, 2005, the non-promoters who were holding shares in the company as at quarter ended March 2005 exited the company. The “Non-Promoters” as per BSE website for the next quarter ended June, 2005 comprised four private corporate bodies viz. PTC Cables Pvt Ltd. (hereinafter referred to as ‘PTCCPL’), Union Conductor Pvt Ltd. (hereinafter referred to as ‘UCPL’), Pravin Polyethylene Pvt Ltd. (hereinafter referred to as ‘PPPL’) and Aryan Wires Pvt Ltd.(hereinafter referred to as ‘AWPL’), each holding 21.25%, which together comprised 85% of the shareholding of the Company and Indian Public holding 0.5%.
48. On further analysis, it was observed from the Director Identification Number (hereinafter referred to as ‘DIN’)/ Designated Partner Identification Number (hereinafter referred to as ‘DPIN’) details downloaded from the Ministry of Corporate Affairs (hereinafter referred to as ‘MCA’) website that Mr. C S Raha (DIN/ DPIN No. 01573565) had digitally signed Form 23AC as the Director of Noticee Sterlite for the Balance Sheet as at March 31, 2006 and certified for the correctness and completion of the information given in the said form. It was also observed that Mr. C.S. Raha was the director in all the aforesaid four private corporate bodies viz. PTCPL, UCPL, PPPL and AWPL w.e.f. May 20, 1993. ***Thus, it becomes evident that Mr. C.S.Raha, who was the director of Noticee Sterlite, was also the director in four private corporate bodies, each of which acquired 21.25% (overall 85% of the shareholding of the Company), immediately upon acquisition of the shares of the Company by Noticee Sterlite on April 02, 2005.***
49. Again it was observed from the DIN/ DPIN details downloaded from MCA website that Mr. Ajay Kumar (DIN/ DPIN No. 00811361), who was the director of the Noticee Sterlite w.e.f. April 29, 1997 upto December 20, 2007, was the director in all the aforesaid four private corporate bodies viz. PTCPL, UCPL, PPPL and AWPL w.e.f. May 01, 2001. On further perusal of the said details, it was observed that Mr. Ajay Kumar resigned from the directorship of PTCPL, PPPL and AWPL w.e.f. February 19, 2009 and from UCPL w.e.f. January 21, 2009. ***Thus, it becomes evident that Mr. Ajay Kumar, who again was the director of Noticee Sterlite during the relevant period, was also the***

***director in the aforesaid four private corporate bodies, each of which acquired 21.25% (overall 85% of the shareholding of the Company), immediately upon acquisition of the shares of the Company by Noticee Sterlite on April 02, 2005.***

50. ***Thus, it was observed from above that two directors of Noticee Sterlite, were also the directors of the four private corporate bodies, each of which acquired 21.25% (overall 85% of the shareholding of the Company), immediately upon acquisition of the shares of the Company by Noticee Sterlite on April 02, 2005.***

51. It was further observed from Form 23AC of the Company for the balance sheet as at March 31, 2006 downloaded from MCA website that email-id of [ajaykumar@sterlitefoundation.org](mailto:ajaykumar@sterlitefoundation.org) was mentioned as the email-id of the Company. The same email id was also mentioned as email id of the Noticee Sterlite on Form 23AC for filing Balance Sheet and other documents with the Registrar downloaded from MCA website for the Balance Sheet as at March 31, 2006. Also, it was noted that the Noticee Sterlite and the Company had the same auditor viz. R. Patodia & Co. ***Thus, it was observed that Noticee Sterlite and the Company shared common email-id and common auditor during the relevant period.***

52. Similarly, it was observed from the Annual Return of Noticee Sterlite that Mr. Shailesh Agarwal was the director of Noticee Sterlite w.e.f. April 29, 1997. Further from the copy of Form 23AC of the Company for the balance sheet as at March 31, 2006 downloaded from the MCA website, it was observed that the said form for the Company was digitally signed by Mr. Shailesh Agarwal (DIN No. 01072910) in the capacity of Director of the Company. ***Thus, it was observed that one of the directors of Noticee Sterlite was also appointed on the Board of the Company.***

53. Regulation 2(1)(c) of Takeover Regulations, 1997 defines 'control' as under:

*2(1) (c) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;*

54. It is noted from the above that pursuant to Noticee Sterlite acquiring 23,050 shares constituting 5.76% through off-market purchase on April 02, 2005 and becoming a part of the promoter group, almost the entire shareholding (99.5%) of the Company came to be directly/ indirectly held by Noticee Sterlite. Also, contrary to the submissions put forth vide letter dated September 26, 2014 that Noticee Sterlite did not nominate any of its directors or promoters on the Board of the Company to exercise any sort of control whatsoever, it is observed from records independently downloaded from MCA website that one of the director of the Noticee was on the Board of the Company and the said director had digitally signed Form 23AC of the Company for the balance sheet as at March 31, 2006. Also both the Noticee and the Company shared common email id for year ended March 31, 2006 and had common auditors.
55. Hence it becomes clear from all of the above that Noticee Sterlite was definitely in the drivers seat upon acquisition of shares of the Company on April 02, 2005 and becoming a part of the promoter group, as there was a clear visible change in control of the company upon such acquisition, whereby almost the entire shareholding (99.5%) of the Company came to be directly/ indirectly held by Noticee Sterlite. Therefore, Noticee Sterlite was required to make a public announcement to acquire shares in accordance with Regulation 12 of the Takeover Regulations, 1997, not later than four working days as given under Regulation 14(3). However Noticee Sterlite did not make any open offer. Hence, it is *inter alia* alleged that Noticee Sterlite violated Regulation 12 read with Regulation 14 of the Takeover Regulations, 1997.
56. I find that Noticee Sterlite in its submission has placed reliance on the decision of the Hon'ble SAT in the case of Shubhkam Ventures wherein it had opined that to acquire control would be to acquire "effective control". Noticee Sterlite has submitted that by no stretch of imagination it could be construed that a person with a shareholding of merely 5.76% of share capital, with no nominee on Board of Directors and in the absence of any shareholder or voting agreement can exercise effective control.
57. I find that in ***Subhkam Ventures (I) Private Ltd v The Securities and Exchange Board of India vide Order dated January 15, 2010, the Hon'ble SAT*** observed that what is contemplated for a

‘change in control’ under the 1997 Code is a proactive control and not a reactive control. A proactive control would mean a power by which an acquirer can command the target company to do what they want it to do. Power by which an acquirer can only prevent a company from doing what the latter wants to do is by itself not control.

58. In the given case, as demonstrated above, I note that Noticee Sterlite definitely had the right to appoint majority of the directors or to control the management or policy decisions of the company, as Noticee Sterlite directly/ indirectly held almost the entire shareholding (99.5%) of the Company. The details of other directors of the Company, other than Mr. Shailesh Agarwal could not be obtained, as BSE has stated that the company had not submitted information about its directors during the period 2004-05 to 2007-08, when the company was suspended.
59. In response to the supplementary SCN issued on November 17, 2015 elaborating the alleged charge against Noticee Sterlite of triggering Regulation 12 read with Regulation 14(3) of the Takeover Regulations, 1997 by acquiring 23,050 shares (5.76%) of the company on April 02, 2005, Noticee Sterlite vide email dated January 25, 2016 initially submitted that it has nothing further to add other than what has been already stated in its earlier submissions. Subsequently vide letter dated April 11, 2016, the company in response to hearing notice dated March 03, 2016 reiterated its earlier submissions that they did not have any controlling stake in the company and that they did not appoint any directors nor manage the company indirectly as mentioned in section 2(1)(c) of the Takeover Regulations, 1997. It was also stated that their intention to increase the stake was only for guiding the company out of its bad condition. Noticee Sterlite, however, admitted that there may have been a procedural lapse in their case.
60. From all of the above, I, however, conclude that with the acquisition of shares of the Company by Noticee Sterlite, there was a clear visible change in control in the company upon such acquisition. Noticee Sterlite acquired almost the entire shareholding in the Company. And, control and management is a facet of the holding of shares. Therefore, I conclude that Noticee Sterlite upon acquisition of shares of the Company on April 02, 2005 was *inter alia* required to make a public announcement to acquire shares in accordance with Regulation 12 read with Regulation 14 of Takeover Regulations, 1997. However Noticee Sterlite failed to make an open offer.

61. I find that the Noticee Sterlite has relied on the observation of the **Hon'ble Supreme Court in the matter Hindustan Steel v. State of Orissa (1969)**, wherein the Hon'ble Supreme Court has held that *"in a quasi-judicial criminal proceeding, penalty will not be ordinarily imposed unless the party had acted deliberately in defiance of law."* However, I find that the position has since been clarified by the **Hon'ble Supreme Court in its Order dated May 23, 2006 in the case of Chairman SEBI vs. Shriram Mutual Fund and Anr. {[2006] 5 SCC 361}**, wherein it was held that decision in case of Hindustan Steel Ltd. relating to criminal/quasi criminal proceedings has no application in the imposition of civil liabilities under the SEBI Act and Regulations made thereunder. In the said case, the Hon'ble Supreme Court also held that *"In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial"*. 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 *"Once it is established that the mandatory provisions of takeover code was violated the penalty must follow."*
62. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty against the Noticee Hitesh under Section 15A(b) of SEBI Act and against the Noticee Sterlite under Section 15 A(b) and 15 H(ii) of the SEBI Act, 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,—*
- (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.*
- 15H. Penalty for non-disclosure of acquisition of shares and take-overs.-**
- 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;*

*(iii) ....*

*he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

63. While determining the quantum of monetary penalty under Section 15 A(b) and/ or Section 15H(ii) of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, 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 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.”.*

64. The main objective of the Takeover Regulations is to afford fair treatment for shareholders who may be affected by the non-disclosure and the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, the cornerstone of the Takeover regulations is investor protection.

65. As per Section 15A(b) of the SEBI Act, the Noticees are liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Section 15



H(ii) of SEBI Act provides for imposition of monetary penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher, if any person, who is required under the Act or any rules or regulations made there under, fails to make a public announcement to acquire shares at a minimum price.

66. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. Under Section 15-J of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticees. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticees. I also note that there are no past non-compliance of SEBI Act and Regulations by the Noticees and no action was taken by SEBI in the past against the Noticees.

67. I find further that in ***Appeal No. 78 of 2014 of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated September 30, 2014*** had observed that:

*"... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."*

In view of the same, the argument put forth by the Noticee that there was no malafide intention and that the Noticees did not gain anything by virtue of the transactions is not relevant for the given case.

68. I further find that the ***Hon'ble Securities Appellate Tribunal (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.”*

In view of the same, the argument made by Noticee Sterlite that since the company was not widely held by retail investors, there was no risk of hurting the interest of public at large too is not relevant for the case.

69. Further, Noticee Sterlite had acquired 23,050 shares constituting 5.76% of shares of the company through off-market purchase on April 02, 2005. The details of the price at which the Noticee Sterlite was required to make an open offer to the shareholders of the Company pursuant to acquisition of 23,050 shares (5.76%) on April 02, 2005 was sought vide email dated May 26, 2017 from Intensive Fiscal Services Private Limited (IFSPL), the Managers to the Offer made by Mr. Vinod Kumar Bansal to the shareholders of the Company in March 2012. In response, IFSPL vide email dated May 30, 2017 provided the calculation of Offer Price at which Open Offer was required to be made by Noticee Sterlite to the shareholders of the Company on April 02, 2005 in terms of Takeover Regulations, 1997 as per details given below:

Transaction : Change in Control on April 02, 2005 by Sterlite Metal Rolling Mills Pvt. Ltd		
<i>Whether Equity Shares were frequently traded or infrequently traded</i>		
Particulars		Amount
No. of Equity shares traded during October 2004 to March 2005		Nil*
Annualized Turnover of Equity shares		Nil
Total No. of Equity shares listed		4,000,00
% of trading w.r.t Total no. of Equity shares listed		Nil
<i>Hence Equity Shares Infrequently Traded</i>		
*Source: www.bseindia.com		
Calculation of Offer Price		
Sr. No.	Particulars	Rs.
a	Negotiated price of the Transaction	10.00
b	Highest price paid by acquirer or persons acting in concert during 26 weeks period prior to the date on which PA should have been given	Nil
c	Book value as on March 31st, 2005	-85.97
d	Highest of the a, b & c	10.00
e	Offer Price as on April 02, 2005 in terms of SEBI SAST Regulations, 1997	10.00

70. Thus, I note that in view of the above, the Offer price of the Open Offer that was required to be made by Noticee Sterlite pursuant to acquisition of shares on April 02, 2005 would have been Rs. 10/- per share. The open offer under Regulation 12 of Takeover Regulations, 1997 should have been made within four working days as per Regulation 14(3) of the Takeover Regulations, 1997. Hence, the open offer should have been made latest by April 07, 2005, however, the same was not done. The open offer was finally made by Mr. Vinod Kumar Bansal at Rs. 34/- per share, when he acquired shares of the Company at a price of Rs. 10/- per share, pursuant to the Share Purchase Agreement (SPA) dated January 31, 2012.

71. I further find that both the Noticees viz. Noticee Hitesh and Noticee Sterlite have stated that 23,050 shares sold by Noticee Mr. Hitesh Bhutla on April 02, 2005 were acquired by Noticee Sterlite. Skyline Financial Services Pvt. Ltd. (Skyline), the Registrars to the Company has provided the details of shareholders who were holding shares as on April 01, 2005 and transferred shares from April 02, 2005 upto January 31, 2012 i.e. prior to the said public announcement made by the Acquirer Mr. Vinod Bansal on January 31, 2012. The said details showing the names of the shareholders who held shares as on April 01, 2005 in the Company and who had transferred their shares during April 02, 2005 upto January 31, 2012 along with the quantity of shares sold, price at which the shares were sold as provided by Skyline is as given below:

SRNO	Name of Shareholders	Shares as 01/04/05	Transfer Date	Buyer Name	SHARES	Share Price
1	DEBRATAN RAHA	83,000	02/04/2005	PTC CABLES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	PTC CABLES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	PTC CABLES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	PTC CABLES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	PTC CABLES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	PTC CABLES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	PTC CABLES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	PTC CABLES PVT LTD	3,000	Rs.10/- per shares
2	KUSUM PATWARI	5,400	02/04/2005	UNION CONDUCTOR PVT LTD	5,400	Rs.10/- per shares
3	SAROJ AGARWAL	3,100	02/04/2005	UNION CONDUCTOR PVT LTD	3,100	Rs.10/- per shares
4	BRIJ MOHAN	5,000	02/04/2005	UNION CONDUCTOR	5,000	Rs.10/- per shares

SRNO	Name of Shareholders	Shares as 01/04/05	Transfer Date	Buyer Name	SHARES	Share Price
	PRASAD			PVT LTD		
5	MAHENDRA BAJAJ	11,000	02/04/2005	UNION CONDUCTOR PVT LTD	5,500	Rs.10/- per shares
			02/04/2005	UNION CONDUCTOR PVT LTD	5,500	Rs.10/- per shares
6	NARESH GARG	5,000	02/04/2005	UNION CONDUCTOR PVT LTD	5,000	Rs.10/- per shares
7	BINOD KUMAR PATWARI	5,000	02/04/2005	UNION CONDUCTOR PVT LTD	5,000	Rs.10/- per shares
8	CHAMPA PATWARI	5,000	02/04/2005	UNION CONDUCTOR PVT LTD	5,000	Rs.10/- per shares
9	RAGHUNANDAN PATWARI	25,000	02/04/2005	UNION CONDUCTOR PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	UNION CONDUCTOR PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	UNION CONDUCTOR PVT LTD	5,000	Rs.10/- per shares
10	DIPAK KUMAR PATWARI	5,000	02/04/2005	UNION CONDUCTOR PVT LTD	5,000	Rs.10/- per shares
11	OM PRAKASH GARG	5,000	02/04/2005	UNION CONDUCTOR PVT LTD	5,000	Rs.10/- per shares
12	SHRDA GUPTA	5,000	02/04/2005	UNION CONDUCTOR PVT LTD	5,000	Rs.10/- per shares
13	S B GOSWAMI	10,000	02/04/2005	PRAVEEN POLYTHYLENE PVT LTD	10,000	Rs.10/- per shares
14	MOHD AZIZ	10,000	02/04/2005	PRAVEEN POLYTHYLENE PVT LTD	10,000	Rs.10/- per shares
15	HITESH BHUTLA	50,000	02/04/2005	PRAVEEN POLYTHYLENE PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	PRAVEEN POLYTHYLENE PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	PRAVEEN POLYTHYLENE PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	PRAVEEN POLYTHYLENE PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	PRAVEEN POLYTHYLENE PVT LTD	10,000	Rs.10/- per shares
16	PRADIP AGARWAL	5,000	02/04/2005	PRAVEEN POLYTHYLENE PVT LTD	5,000	Rs.10/- per shares
17	BIRBAL AGARWAL	5,000	02/04/2005	PRAVEEN	5,000	Rs.10/- per shares

SRNO	Name of Shareholders	Shares as 01/04/05	Transfer Date	Buyer Name	SHARES	Share Price
				POLYTHYLENE PVT LTD		
18	KRISHNA DEV TIWARI	5,000	02/04/2005	PRAVEEN POLYTHYLENE PVT LTD	5,000	Rs.10/- per shares
19	CHANDRA SHEKHAR RAHA	83,000	02/04/2005	ARYAN WIRES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	ARYAN WIRES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	ARYAN WIRES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	ARYAN WIRES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	ARYAN WIRES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	ARYAN WIRES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	ARYAN WIRES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	ARYAN WIRES PVT LTD	10,000	Rs.10/- per shares
			02/04/2005	ARYAN WIRES PVT LTD	3,000	Rs.10/- per shares
20	NIRMALA AGARWAL	4,600	02/04/2005	STERLITE METAL ROLLING MILLS (P)LTD	2,500	Rs.10/- per shares
			02/04/2005	STERLITE METAL ROLLING MILLS (P)LTD	2,100	Rs.10/- per shares
21	VIMALA AGARWAL	3,050	02/04/2005	STERLITE METAL ROLLING MILLS (P)LTD	950	Rs.10/- per shares
			02/04/2005	STERLITE METAL ROLLING MILLS (P)LTD	2,100	Rs.10/- per shares
22	MAHESHWARI PRASANT SINGH	5,400	02/04/2005	STERLITE METAL ROLLING MILLS (P)LTD	5,400	Rs.10/- per shares
23	RAMSWARUP PATWARI	10,000	02/04/2005	STERLITE METAL ROLLING MILLS (P)LTD	10,000	Rs.10/- per shares
24	BHARAT BHUSHAN* PANDEY	10,000	02/04/2005	ARYAN WIRES PVT LTD	10,000	Rs.10/- per shares
25	BHULA PRASAD SHRIWASTAVA	7,500	02/04/2005	PTC CABLES PVT LTD	2,000	Rs.10/- per shares
			02/04/2005	UNION CONDUCTOR PVT LTD	5,500	Rs.10/- per shares
26	DEBRATAN RAHA	2,000	29/10/2008	RASIKLAL SHAH	2,000	Rs.10/- per shares
27	HITESH BHUTLA	2,500	29/10/2008	RASIKLAL SHAH	2,500	Rs.10/- per shares
28	SHAILESH AGARWAL	3,550	29/10/2008	RASIKLAL SHAH	3,550	Rs.10/- per shares
29	BALMIKUND KUMAR	4,400	29/10/2008	RASIKLAL SHAH	4,400	Rs.10/- per shares

SRNO	Name of Shareholders	Shares as 01/04/05	Transfer Date	Buyer Name	SHARES	Share Price
30	AJAY KUMAR	5,500	29/10/2008	RASIKLAL SHAH	5,500	Rs.10/- per shares
31	C S RAHA	5,000	29/10/2008	RASIKLAL SHAH	5,000	Rs.10/- per shares
32	VARUN AGARWAL	3,000	29/10/2008	RASIKLAL SHAH	3,000	Rs.10/- per shares
33	PUNIT AGARWAL	2,000	29/10/2008	RASIKLAL SHAH	2,000	Rs.10/- per shares
34	SANWARMAL AGARWAL	3,000	29/10/2008	RASIKLAL SHAH	3,000	Rs.10/- per shares
35	SUBHAH PATWARI	2,000	29/10/2008	RASIKLAL SHAH	2,000	Rs.10/- per shares
36	RADHA BALLABH AGARWAL	1,000	29/10/2008	RASIKLAL SHAH	1,000	Rs.10/- per shares
37	K K TIWARI	3,000	29/10/2008	RASIKLAL SHAH	3,000	Rs.10/- per shares
	<b>Total</b>	<b>4,08,000</b>			<b>4,08,000</b>	

72. It is observed from the above that though both the Noticees viz. Noticee Sterlite and Noticee Hitesh Bhutla had claimed that 23,050 shares sold by Noticee Mr. Hitesh Bhutla on April 02, 2005 were acquired by Noticee Sterlite, I find from the details provided by Skyline that the same is not correct. It is observed from the above table that Noticee Sterlite had acquired shares on April 02, 2005 from Ms. Nirmala Agarwal (4,600 shares), Ms. Vimala Agarwal (3,050 shares), Mr. Maheshwari Prashant Singh (5,400 shares) and Mr. Ramswarup Patwari (10,000 shares) and not from Mr. Hitesh Bhutla, as has been claimed by Noticee Sterlite. Similarly, I find that Noticee Mr. Hitesh Bhutla had sold 50,000 shares to Praveen Polyethylene Pvt. Ltd. and not to Noticee Sterlite, as has been claimed by Noticee Mr. Hitesh Bhutla.

73. Further, I find from the details provided by Skyline that it was on the very same date that Noticee Sterlite acquired 23,050 shares of the Company on April 02, 2005, the four private corporate bodies viz. PTCCPL, UCPL, PPPL and AWPL, wherein two of the directors of Noticee Sterlite were also the directors, had each acquired 21.25% (overall 85% of the shareholding of the Company) shares of the Company. Thus, I find that Noticee Sterlite directly/ indirectly had acquired almost the entire shareholding of the Company on April 02, 2005 without making an open offer, thus leaving only a miniscule 0.5% shareholding with the Indian Public.

74. Further, for all the aforesaid transfers done on April 02, 2005, though the consideration as per the share transfer deed was Rs. 10/- per share, the following discrepancies were noted on perusal of the original transfer deeds as produced before me by the Compliance Officer of Skyline:

- a) That '*the specimen signature of the transferees*' column on all the 26 original transfer deeds produced before me were left blank;
- b) That the office use part and specimen signature of the transferees column of the transfer deed pertaining to Mr. Debratan Raha was torn;
- c) That there were no share transfer stamps affixed behind the transfer deed in respect of the following:

Sr. No.	Transferor	Transferee	Number of Shares
	Saroj Agarwal	Union Conductor Pvt. Ltd.	3,100
	Dipak Kumar Patwari	Union Conductor Pvt. Ltd.	5,000
	Om Prakash Garg	Union Conductor Pvt. Ltd.	5,000
	Hitesh Bhutla	Praveen Polythelene Pvt. Ltd.	50,000
	Chandra Shekhar Raha	Aryan Wires Pvt. Ltd.	83,000
	Vimala Agarwal	Sterlite Metal Rollong Mills (P) Ltd.	3,050
	Bharat Bhushan Pandey	Aryan Wires Pvt. Ltd.	10,000

- d) A consolidated sheet on which share transfer stamps of value Rs. 6,055/- were separately affixed was shown;
- e) That there was no initial or signature of the Company/ Registrar or stamp of the company/ Registrar on the transfer deed at Office Use column - 'Checked by' and 'Signature tallied by'. The transfer no. 2 & 3 were interchanged by applying white ink without initial of the Company/ Registrar;
- f) That there were changes made on the following share transfer deeds by using white ink which were not countersigned by the transferor/ transferee, as applicable. The following are such instances: Distinctive number of transferor Kusum Patwari (transferee Union Conductor Pvt. Ltd.), Certificate number of transferor Raghunandan Patwari (transferee Union Conductor Pvt. Ltd.), Consideration in words (Five lacs) of transferor Hitesh Bhutla (transferee Praveen Polythelene Pvt. Ltd.).

75. Hence, the validity of the transfers as aforesaid done by the Company in-house is in question. However, even presuming that the transfers were valid, it follows that Noticee Sterlite on acquiring 23,050 shares (5.76%) on April 02, 2005 and becoming the promoter of the Company, indirectly through its four private corporate bodies viz. PTCCPL, UCPL, PPPL and AWPL also acquired 85% of the shareholding of the Company on the very same date. Thus, I find that in actuality only 0.5% shareholding was with non-promoters, as 14.5% was held by the promoters and 85% of the non-promoter holding was indirectly held by Noticee Sterlite through the four private corporate bodies.
76. I find further that as per clause 40(A) of the listing agreement as at the relevant point of time, the Company was required to maintain on a continuous basis, the minimum level of non-promoter holding at the level of public shareholding as required at the time of listing, which was atleast 10% as on April 2005. But due to Noticee Sterlite indirectly through its four private corporate bodies acquiring almost the entire non-promoter shareholding on the same day that it acquired shares in the company and becoming a promoter of the Company without following the processes under Takeover Regulations, 1997, has resulted in company complying with clause 40(A) of listing agreement in letter, but, not in spirit.
77. I find further that Noticee Sterlite has argued that under Sec 15 H(ii), penalty mentioned is twenty five crore rupees or three times of profit made out of such failure, whichever is higher, which clearly shows that the intention of SEBI Act is to crack down on illegal or fraudulent Act and personal profiteering, which is purely absent from instant case, which is only related to procedural lapse. In fact, I find that the failure of the Noticee Sterlite in making an open offer at the relevant point of time, and indirectly acquiring almost the entire non-promoter shareholding, has resulted in concentration of shareholding (more than 95%) of the Company directly/ indirectly in the hands of the Promoter Noticee Sterlite, thus, prejudicing the interests of the investing public and defeating the prime objective of the SCRA of preventing undesirable transactions in securities.
78. I find here that the Noticee Sterlite has stated that since the company was not widely held by retail investors, there was no risk of hurting the interests of public at large. On the other hand, I



find that Noticee Sterlite by not making a public announcement and indirectly acquiring almost the entire non-promoter shareholding has resulted in the Company indirectly circumventing the requirement under clause 40(A) of listing agreement, which was meant to ensure liquidity in the market and fair price discovery. Thus, I conclude that the failure of Noticee Sterlite in making an open offer was a serious matter and cannot be considered as a mere procedural lapse.

## **ORDER**

79. After taking into consideration all the facts and circumstances of the case, I impose the following penalty against the Noticees which will be commensurate with the violations committed by the Noticees:

Sr. No.	Noticee	Regulation violated	Penalty Section	Penalty Amount
1.	<b>Mr. Hitesh Bhutla</b>	Regulation 7(1A) read with 7(2) of the Takeovers Regulations, 1997	Section 15 A (b) of the SEBI Act	<b>Rs.7,50,000/- (Rupees Seven lacs fifty thousand only)</b>
2.	<b>Sterlite Metal Rolling Private Limited</b>	Regulations 7 (1) read with Regulation 7 (2) Takeover Regulations, 1997	Section 15 A (b) of SEBI Act, 1992	<b>Rs.4,50,000/- (Rupees Four lacs fifty thousand only)</b>
	<b>Sterlite Metal Rolling Private Limited</b>	Regulation 12 read with Regulation 14 of the Takeover Regulations, 1997	Section 15 H (ii) of SEBI Act	<b>Rs. 50,00,000/- (Rupees Fifty Lacs only)</b>

80. The Noticee(s) shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

81. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department, SEBI. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under:

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)	

82. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee(s) and also to SEBI.

Date: **July 31, 2017**

Place: **Mumbai**

**Anita Kenkare**  
**Adjudicating Officer**