

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. PB/AO- 35/2010]**

---

**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**

**Ms. Nandita Sen**

**PAN No. AICPS2117A**

---

**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted examination in the trading in the scrip of M/s Orissa Sponge Iron and Steel Ltd. (hereinafter referred to as OSIL/Company) for the period from August 01, 2007 to November 07, 2007. (hereinafter referred to as “**examination period**”)
2. The findings of the examination led to the allegation that Ms. Nandita Sen, who was Director of OSIL till March 2009 (hereinafter referred to as “**Noticee**”) had violated regulations 13(4) and 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred

to as “**PIT Regulations**”) and consequently, liable for monetary penalty under section 15A (b) of the SEBI Act.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. The undersigned has been appointed as Adjudicating Officer vide order dated July 06, 2009 under section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘**Rules**’) to inquire into and adjudge under section 15A(b) of the SEBI Act.

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

4. Show Cause Notice No. EAD/PB/RG/198333/2010 dated March 12, 2010 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A (b) of SEBI Act for failure to comply with the provisions of regulations 13 (4) and 13(5) of PIT Regulations.
5. It was alleged in the SCN that there was inconsistency in the stamps borne by the copies of the same documents submitted by OSIL vide letters dated January 23, 2008, February 04, 2008 and March 25, 2009. It was also alleged that the Noticee violated regulations 13(4) and 13(5) of PIT Regulations.
6. The aforesaid SCN was sent to the Noticee through Eastern Regional Office, SEBI. The said notice was received and acknowledged by the Noticee on March 16, 2010. The Noticee replied to the SCN vide e-mail dated March 31, 2010, wherein the Noticee requested for further

time of about a fortnight to furnish her reply. The Noticee replied vide letter dated April 15, 2010 and April 26, 2010 wherein the Noticee denied the allegations made against her. The Noticee in her reply *inter-alia* stated the following:

*"I had sold 15,730 shares I held in the company between 23.08.2007 to 08.11.2007, filing declarations in Form D as and when the shares were sold. Copies of these declarations were filed with Bombay Stock Exchange and SEBI at different points of time by OSIL, in which discrepancies were stated to have been noticed by SEBI. I have ceased to be a Director of the Company with effect from March 2009 and therefore I had written to OSIL to explain to me the reasons for the discrepancies as pointed out by you.*

*From the details I received from OSIL, it appears that:*

- 1. The documents filed by me were initially received by the receiving official with dates & signature put on the documents received from me*
- 2. Later while filing the documents in the relevant file, the company stamp had also been put on them.*
- 3. The copies of the documents sent to BSE on 23.01.08 and to SEBI on 04.02.08 were in close proximity of each other and before the Company stamp had been affixed. The copy sent to Sebi after more than a year on 25.03.09 bore the Company stamp also on the initial & date as in the meantime the stamp had been affixed while filing the documents in the relevant file.*
- 4. The Form Ds that were filed by me and as are maintained in OSIL's files are one & the same, which bore only initials & dates earlier and a company stamp on the initial and date later. I hope you will*

*appreciate that the distinction shown in the manner of receipt earlier without the company stamp and later after stamp had been affixed by the company, cannot constitute a violation u/s 13(4) or 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 by me. This was entirely as per internal practice of the company.”*

7. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on May 13, 2010 vide notice dated April 29, 2010. Noticee, alongwith Mr. N.L. Bhatia and Mr. Biswajit Sen, both Practicing company secretaries, appeared for the hearing. During the course of the hearing, Mr. N.L. Bhatia and Mr. Biswajit Sen made submissions on behalf of the Noticee. The submissions made earlier by the Noticee vide letters dated April 15, 2010 and April 26, 2010 were reiterated. Additional submissions vide letter dated May 13, 2010 were made to re-establish the position in the matter.

### **CONSIDERATION OF ISSUES AND FINDINGS**

8. The issues that arise for consideration in the present case are :
  - a. Whether there is any inconsistency in the stamps borne by the copies of the same documents submitted on different dates i.e. January 21, 2008, February 04, 2008 and March 25, 2009?
  - b. Whether the Noticee had complied or not with the provisions of Regulations 13(4) and 13(5) of PIT Regulations?
  - c. Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act?
  - d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

9. Before moving forward, it is pertinent to refer to the provisions of regulations 13(4) and 13(5) of PIT Regulations, which reads as under:-

***Regulation 13***

***Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies - Initial Disclosure.***

*(4) Any person who is a director or officer of a listed company, shall disclose to the company [in Form D], the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or [25,000] shares or [1%] of total shareholding or voting rights, whichever is lower.*

*(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of:*

- (a) the receipts of intimation of allotment of shares, or*
- (b) the acquisition or sale of shares or voting rights, as the case may be.*

10. The issues for examination in this case are: (a) whether there is any inconsistency in the stamps borne by the copies of the same documents submitted on different dates i.e. January 23, 2008, February 04, 2008 and March 25, 2009 (b) if yes, is there any violation of regulations 13(4) and 13(5) of PIT Regulations.

11. The findings of the examination revealed the following:

Noticee had sold 15,930 shares amounting to Rs. 21,42,556/- during the examination period. The details of sale of shares according to the copies of disclosures made by Noticee are as under:

No. of shares held by the Noticee prior to sale	No. of shares sold	Date of sale of shares	Date of intimation to the company by Noticee	No. of shares held by the Noticee after sale	SaleValue
17380	380	23/08/07	31/08/07	9000	21500.50
	1000	24/08/07			59364.7
	2000	27/08/07			124599.53
	3000	28/08/07			196153.23
	2000	29/08/07			137237.47
	<b>8380</b>				<b>538855.43</b>
9000	1000	30/08/07	3/09/07	7000	72003.04
	1000	31/08/07			75586.32
	<b>2000</b>				<b>147589.36</b>
7000	500	3/09/07	6/09/07	5700	39659.79
	500	4/09/07			41626.90
	300	5/09/07			26215.80
	<b>1300</b>				<b>107502.49</b>
5700	300	10/09/07	14/09/07	4900	30321.76
	200	12/09/07			22272.57
	300	13/09/07			35068.27
	<b>800</b>				<b>87662.60</b>
4900	100	17/09/07	21/09/07	4400	12883.43
	200	18/09/07			27050.20
	100	19/09/07			14196.76
	100	20/09/07			14903.42
	<b>500</b>				<b>69033.81</b>
4400	100	21/09/07	26/09/07	4150	15645.07
	100	24/09/07			16425.59
	50	25/09/07			8623.62

	<b>250</b>				<b>40694.28</b>
4150	100	26/09/07	01/10/07	3900	18107.75
	50	27/09/07			9504.69
	100	28/09/07			19959.88
	<b>250</b>				<b>47572.32</b>
3900	150	1/10/07	5/10/07	3550	31433.06
	100	3/10/07			21999.86
	100	4/10/07			23099.21
	<b>350</b>				<b>76532.13</b>
3550	300	9/10/07	15/10/07	3100	80195.09
	100	10/10/07			28065.69
	50	12/10/07			15471.65
	<b>450</b>				<b>123732.43</b>
3100	100	15/10/07	19/10/07	2650	32484.48
	50	16/10/07			17053.82
	300	18/10/07			112786.80
	<b>450</b>				<b>162325.10</b>
2650	1000	8/11/07	12/11/07	1650	639541.70
1650	200	26/12/07	28/12/07	1450	101514.41

12. The first issue for examination is

(a) Whether there is any inconsistency in the stamps borne by the copies of the same documents submitted by OSIL on different dates i.e. January 23, 2008, February 04, 2008 and March 25, 2009.

### **Finding**

From the submissions of the Noticee and upon careful examination of both copies that were sent to BSE and SEBI vide letters dated January 23, 2008 and February 04, 2008 and the later copy filed with SEBI vide letter dated March 25, 2009, I find that the copies are fully identical and contents thereof including the date of receiving thereof are same except that the copy filed with SEBI vide letter dated March 25, 2009

bears the stamp of the company also. I find merit in the submissions of the Noticee and agree that there is no inconsistency in the stamps borne by the copies of the same documents submitted on different dates.

b) Is there any violation of Regulations 13(4) and 13(5) of PIT Regulations?

I find that the Noticee was holding 17,380 shares as on October 31, 2003. Out of 17,380 shares, the Noticee sold 15,930 shares during the period from August 23, 2007 to December 26, 2007. I find that the Noticee was required to disclose her shareholding and any change therein in accordance with the provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations within four working days of the transactions. I accept that the Noticee has complied with the aforesaid provisions as per the details mentioned in aforesaid paragraph 11.

### **ORDER**

13. In view of the foregoing, the alleged inconsistency in the stamps borne by the copies of the same documents submitted by OSIL on different dates i.e. January 21, 2008, February 04, 2008 and March 25, 2009 and the alleged violation of the provisions of regulations 13(4) and 13(5) of PIT Regulations by the Noticee does not stand established and the matter is, accordingly, disposed of.

14. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and to SEBI.

Date: **May 28, 2010**  
Place: **Mumbai**

**PARAG BASU**  
**ADJUDICATING OFFICER**