

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

**[ADJUDICATION ORDER NO. EAD-2/DSR/RG/PU/275/2014]**

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**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

**Sunmet Holdings India Private Limited (Erstwhile Sun Metals Pvt. Ltd.)  
[PAN: AADCS2821B]**

In the matter of

**Indsil Hydro Power and Manganese Limited**

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1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had examined into the alleged irregularities in the matter of Indsil Hydro Power and Manganese Limited (herein after referred to as 'IHPML'), a company listed on Bombay Stock Exchange (BSE) and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and the various rules and regulations made there under.
2. The examination, inter alia, revealed that Sunmet Holdings India Private Limited (Formerly known as Sun Metals Pvt. Ltd and herein after referred to as 'the Noticee') is a promoter company of IHPML and was in possession of 22,29,500 (23.59%) shares of IHPML. It was observed that the Noticee had acquired certain shares on three occasions i.e. on December 29, 2003, April 17, 2004 and March 31, 2008, which increased its shareholding in IHPML by more than 2% on two occasions i.e. to 25.17% upon acquiring shares on December 29, 2003 and 33.85% upon acquisition on

March 31, 2008, respectively, thereby, requiring it to make disclosures to the company, as prescribed under Regulation 13(3) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (herein after referred to as the 'PIT Regulations'). However, the Noticee had failed to do so.

### **Appointment of Adjudicating Officer**

3. SEBI has, therefore, initiated Adjudication proceedings and I have been appointed as the Adjudicating Officer, vide order dated April 21, 2014 under Section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '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 alleged violation of the provisions of law by the Noticee.

### **Show Cause Notice, Reply and Personal Hearing**

4. A show cause notice dated June 26, 2014 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on it under Section 15 A(b) of the SEBI Act for the alleged violation of the provisions of law. The Noticee vide its letter dated July 11, 2014, sought additional time of two weeks to file its reply to the SCN. However, no reply was received in the matter.
5. Thereafter, in the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the said Rules, an opportunity of personal hearing was granted to the Noticee on August 04, 2014. In the meantime, vide letter dated July 24, 2014 the Noticee submitted its reply to the SCN. Further, the Authorized Representatives (ARs) appeared on behalf of the Noticee on the scheduled date and reiterated the written submissions made by the Noticee. Vide letter dated August 02, 2014, additional submissions were submitted by the ARs in the matter. They also

submitted copies of the Noticee's share holding patterns for the quarters ending September 2003 and December 2003.

### **Consideration of Issues, Evidence and Findings**

6. I have carefully perused the charges leveled against the Noticee as mentioned in the SCN, written submissions and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:
  - a) **Whether the Noticee has violated the provisions of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations?**
  - b) **Whether the Noticee is liable for monetary penalty under Section 15 A(b) of the SEBI Act for the aforesaid violation?**
  - c) **If so, what should be the quantum of monetary penalty?**
7. Before moving forward, I would like to refer to the relevant provisions of law, which read as under:

#### **PIT Regulations**

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

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#### ***Continual disclosure.***

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

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*(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within four 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."*

8. I find from the SCN that, the Noticee, is one of the promoter entities of IHPML & was in possession of 22,29,500 (23.59%) shares of IHPML. I further find that the Noticee had acquired 2,00,000, 1,00,000 and 6,68,860 shares of IHPML on December 29, 2003, April 17, 2004 and March 31, 2008, respectively, which increased its shareholding by more than 2% on two occasions i.e. on acquiring shares on December 29, 2003 (25.71%) and March 31, 2008 (33.85%). The details of the acquisitions made by the Noticee on the three occasions is detailed below:

Date	Particulars	Shares acquired	Shares sold	Holding after transaction	Holding %
	Opening balance			22,29,500	23.59%
29-12-2003	Inter se Transfer	2,00,000		24,29,500	25.71%
17-04-2004	Inter se Transfer	1,00,000		25,29,500	26.77%
31-03-2008	Inter se Transfer	6,68,860		31,98,360	33.85%

9. Since, the change in the Noticee's shareholding exceeded 2% on said two occasions, the Noticee was under an obligation to make necessary disclosure as prescribed under Regulation 13(3) read with 13(5) of the PIT Regulations. However, it was alleged that the Noticee had failed to do so.
10. The Noticee, vide its reply dated July 24, 2014 submitted that it was incorporated on August 21, 1980 and it is one of the promoter companies of IHPML, presently

holding 34.73% of the paid up equity share capital. The Noticee further submitted that the transferor and the transferee in all the three transactions as mentioned in the SCN were either the promoters or formed a part of the Promoter's Group of IHPML. With regard to the transaction on December 29, 2003, the Noticee submitted that the necessary disclosures to the company had been made by it but it does not have any copies of the same. The Noticee also submitted that since the transactions were in the nature of an inter se transfer, it did not result in any change in the aggregate holding of the promoter group of IHPML. This change among the promoters was also reflected in the shareholding pattern filed under Clause 35 of the listing agreement for the quarter ended December 31, 2003.

**11.** Further, the Noticee stated that as the transaction involving the change in shareholding was known to the Board, the requirement to file Form C under the PIT Regulations becomes a technical matter. It is evident from the shareholding pattern and from disclosures made by the company to the stock exchanges that there was no willful non disclosure on the part of the Noticee. Therefore, it is the case of the Noticee that the non-submission of the respective forms under the Regulations with respect to the transfer of shares on December 29, 2003 deserves to be condoned. With regard to the transaction on March 31, 2008 for 6,68,860 shares which increased the shareholding of the Noticee to 33.85%, the Noticee submitted that the necessary disclosures were made by it to the company and the company in turn had made the disclosures to BSE on March 31, 2008 itself.

**12.** The Noticee vide its letter August 02, 2014 submitted that as regards the inter se transfer of shares between the promoters on December 29, 2003, IHPML had made the necessary disclosures with respect to the said change in shareholding pattern to the Stock Exchanges as required under Clause 49 of the Listing Agreement. A comparison of the shareholding of the Noticee as on September 30, 2003 and December 31, 2003, clearly shows that the sale of 2,00,000 shares of IHPML has been

in the knowledge of the company which has enabled it to make the necessary disclosures to the stock exchanges. Hence, the Noticee submitted that the sale of shares was already in the public domain and the omission to report as per the said Regulations was not deliberate but only due to inadvertence and such omission is only technical in nature.

**13.** I find from the Noticee's reply dated July 24, 2014 that as regards the acquisition of 2,00,000 shares on December 29, 2003, the said transaction was inter se transfer and the change in the promoter shareholding was known to the Board of company and consequently reflected in the shareholding pattern for the quarter ending December 31, 2003. Further, I note from the Noticee's submissions that the company had made necessary disclosures to the stock exchanges under Clause 49 of the Listing Agreement. However, the said fact does not absolve the Noticee from its duty of making the necessary disclosures to the Company under Regulation 13 (3) read with 13 (5) of the PIT Regulations in as much as the said disclosure shall be made within four 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. Whereas, the requirements of clause 49 of the Listing Agreement are separate and independent and the same have nothing to do with the requirements as prescribed under Regulation 13 (3) read with 13 (5) of the PIT Regulations. I also note that it is the case of the Noticee that it had informed the company about the acquisition made on December 29, 2003, however, does not have any proof of the same. I do not find merit in the submissions made by the Noticee in this regard in as much as the Noticee has failed to produce any documentary evidence in support thereof. Therefore, I conclude that the Noticee has failed to make the disclosures for the acquisition of shares made on December 29, 2003 and has violated the provisions of PIT Regulations.

**14.** Further I find that as regards the acquisition of 6,68,860 shares on March 31, 2008 the Noticee has submitted that the necessary disclosures were made to IHPML which in turn was submitted to the stock exchange by IHPML and has enclosed the documentary

proof in support thereof at Annexure -1 & 2 of its reply. Upon perusal of the said documents, I find that Annexure -1 to the reply does not consist of the disclosures made by the Noticee to IHPML under Regulation 13 (3) of the PIT Regulations while, Annexure 2 consists of the disclosure made by IHPML to the stock exchange under Regulation 13 (6) of the PIT Regulations. However, since the date of intimation of the acquisition made by the Noticee to the company is stated to be March 31, 2008 and as the disclosure in this regard is displayed on the BSE website, I am convinced that the said disclosures were made by the Noticee to the company and I conclude that the Noticee has not violated Regulation 13(3) read with 13(5) of the PIT Regulations as regards the acquisition made on March 31, 2008.

15. From the foregoing, I conclude that the Noticee by failing to make the necessary disclosure to the company (IHPML) upon acquiring 2,00,000 shares (increasing the shareholding from 23.59% to 25.71%) on December 29, 2003 has violated the provisions of Regulation 13 (3) read with 13 (5) of the PIT Regulations and thus, is liable for monetary penalty under Section 15 A (b) of the SEBI Act, which reads as under:

*15A. Penalty for failure to furnish information, return, etc. - If any person, who is required under this Act or any rules or regulations made thereunder,-*

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*(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;*

16. At this instant, it is important to quote the observations of the Hon'ble Supreme Court of India in the matter of SEBI v. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein, the Hon'ble Court, *inter alia*, held: "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing*

*such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow."*

17. While imposing monetary penalty, it is important to consider the factors stipulated in Section 15J 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."*

18. I observe from the material available on record that it is difficult to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the defaults. Further, the violation is not repetitive in nature.

## **ORDER**

19. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I (2) of the SEBI Act read with Rule 5 of the said Rules, I hereby impose a penalty of ₹ 2,00,000/- (Rupees Two Lakh Only ) on the Noticee viz. Sunmet Holdings India Pvt. Ltd. (erstwhile Sun Metals Pvt. Ltd.) under Section 15 A(b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.

20. The above penalty amount shall be paid by the Noticee through a duly crossed demand draft drawn in favour of "SEBI - Penalties Remittable to Government of India" and payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to The Division Chief, Shri Debashis Bandyopadhyay, ISD, Securities and



Exchange Board of India, SEBI Bhavan, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.

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

**Date: November 13, 2014**

**Place: Mumbai**

**D. SURA REDDY  
GENERAL MANAGER &  
ADJUDICATING OFFICER**