

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO- 34/2010]

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

Orissa Sponge Iron and Steel Ltd.

(Pan No.: AAACO2568G)

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 Noticee/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 the Noticee had violated regulation 13(6) 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/198330/2010 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 regulation 13 (6) 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 the Noticee vide letters dated January 23, 2008, February 04, 2008 and March 25, 2009. It was also alleged that the Noticee violated regulation 13(6) of PIT Regulations.
6. The aforesaid SCN was sent through Eastern Regional Office, SEBI. The said notice was received and acknowledged by the Noticee on March 17, 2010. The Noticee replied to the SCN vide letter dated April 12, 2010 and denied the allegation as to inconsistency in the stamps borne by the copies of the same documents submitted by the Noticee vide letters dated January 23, 2008, February 04, 2008 and March 25,

2009 made against it. However, the Noticee admitted there has been unintentional delay on part of the Company in making the disclosure of information of Ms. Nandita Sen, the director of the Noticee regarding the shareholding and changes therein to the Bombay Stock Exchange (BSE). The Noticee in its reply dated April 12, 2010 *inter-alia* stated :

“The difference as to stamp of the company is because of the reason that when the disclosure was sent to BSE and SEBI, it was not noticed that stamp was not affixed at the place of initials and manual insertion of date of receipt. But while filing the document the concerned official as a practice put Company’s stamp over the initials. Thereafter, a year later when the copies of disclosures were sought by your good office, documents as lying in the file were photocopied and sent to you it may also be noted upon careful examination of both copies that were sent to BSE and SEBI and later copy filed with SEBI are fully identical and contents thereof including the date of receiving thereof are same except that the copy filed with SEBI bears the stamp also. Being the same document, it is the only copy that is available in company’s record. That with respect to the disclosure requirement under Regulation 13(4) of PIT it may please be noted that the director Nandita Sen made the disclosures in Form D to the company in respect to all the sales made by her in the scrip of the company irrespective of the quantum of change and value thereof. The sale has been made by the Director in small –small trenches and disclosures have been made by her irrespective of the value of the sale made. The disclosure was not required by the Company in all cases wherein the disclosure were made by the Director, and in view of the disclosures so made in trenches, it just escaped from the foresight of the company to make disclosures when the limit was triggered

and there has been unintentional delay on part of the Company in making the disclosure to the BSE.”

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. Ms. Anjali Aggarwal, Vice President of Corporate Professionals Capital Private Limited and Ms. Shikha Ruia, Officer, Legal and Compliance of the Noticee, appeared for the hearing on behalf of the Noticee on May 13, 2010. During the course of the hearing, the submissions made vide letter dated April 12, 2010 were reiterated by the Noticee. The Noticee requested for giving time till May 18, 2010 for re-substantiating the position of the Noticee in the matter by filing additional written submissions. Vide letter dated May 18, 2010 the written submissions were filed by the Noticee which reiterated the earlier submissions made vide letter dated April 12, 2010.

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 by the Noticee 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 regulation 13 (6) 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 regulation 13(6) of PIT Regulations, which reads as under:-

Regulation 13

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

(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company 46[in Form A], the number of shares or voting rights held by such person, on becoming such holder, within 47[2 working 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.

(2) Any person who is a director or officer of a listed company shall disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents (as defined by the company), within two working days of becoming a director or officer of the company.

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.

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed 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 of such person and his dependents (as defined by the company) 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 [two] working days of :

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

Disclosure by company to stock exchanges.

(6) Every listed company, within five days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under

subregulations (1), (2), (3) and (4) [in the respective formats specified in Schedule III.]

10. The issues for examination in this case are as follows:

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

Finding

Upon careful perusal of the said documents, I find that the contents as well as the source of all the three sets of documents, submitted vide Noticee's letters dated January 23, 2008, February 04, 2008 and March 25, 2009 are all the same, except that the copies filed vide their letter dated March 25, 2009 with SEBI bore the company round stamp on the initials. Therefore, I find merit in the submissions of the Noticee that all the three sets of documents are one and the same except for the fact that the set of documents submitted to SEBI on March 25, 2009 were subsequently stamped and thus I accept that there is no inconsistency in the stamps borne by the copies of the same documents submitted on different dates.

(b) Whether there is any violation of regulation 13 (6) of PIT Regulations?

Finding

The details of the disclosures of information of Ms. Nandita Sen, the director of the Noticee regarding the shareholding and changes therein given by the Noticee vide their letter dated April 12, 2010 are as follows:

Date of Disposal	Date of intimation to the company	No. of shares	% of paid up capital	Sale value	Cumulative Sale value	Remarks
23.08.2007 24.08.2007 27.08.2007 28.08.2007 29.08.2007	31.08.2007	8,380	0.059%	5,38,855.43	5,38,855.43	Exceeds 5 lacs
30.08.2007 31.08.2007	03.09.2007	2,000	0.014%	1,47,589.36		
03.09.2007 04.09.2007 05.09.2007	06.09.2007	1,300	0.008%	1,07,502.49		
10.09.2007 12.09.2007 13.09.2007	14.09.2007	800	0.005%	87,662.60		
17.09.2007 18.09.2007 19.09.2007 20.09.2007	21.09.2007	500	0.001%	69,033.81		
21.09.2007 24.09.2007 25.09.2007	26.09.2007	250	0.000	40,694.28		
26.09.2007 27.09.2007 28.09.2007	01.10.2007	250	0.000	47,572.32	5,00,054.86	Exceeds 5 lacs second

						time
01.10.2007 03.10.2007 04.10.2007	05.10.2007	350	0.001%	76, 532.13		
09.10.2007 10.10.2007 12.10.2007	15.10.2007	450	0.002%	1,23,732.43		
15.10.2007 16.10.2007 18.10.2007	19.10.2007	450	0.002%	1,62,235.10		
08.11.2007	12.11.2007	1000	0.007%	6,39,541.70	10,02,131.36	Exceeds 5 lacs third time
26.12.2007	28.12.2007	200	0.001%	1,01,514.41	1,01,514.41	
Total		15,930	0.1%	21,42,556.06	21,42,556.06	

A disclosure in terms of regulation 13(4) of PIT Regulations with respect to the change in shareholding of a director is required in case where there is a change in the director's shareholding to the effect of 1% of the total shareholding of the company, or 25,000 shares in number or Rs. 5,00,000/- in value. In the present case, I find that the condition as to 1% or 25000 shares was not triggered and it was only that the transactions so carried out by the director Ms. Nandita Sen were in excess of Rs. 5,00,000/- and thus, triggered regulation 13(4) of PIT Regulations. As per regulation 13(6) every listed company, within five days of receipt shall disclose to all stock exchanges on which the company is listed, the information received under subregulations (1),(2),(3),(4) of Regulation 13 in the respective formats specified in Schedule III. I find that there is a delay by the Noticee in submission of the disclosures to BSE under

regulation 13(6) of PIT Regulations on 3 (three) occasions. The details of which are as under:

Date of transactions	Total no. of shares sold	Cumulative Sales Value	Date of intimation to the Noticee	Due Date	Actual Date of Intimation to BSE	Delay (no. of days)
23.08.2007 29.08.2007	8,380	5,38,855.43	31.08.2007	05.09.2007	23.01.2008	139
30.08.2007 28.09.2007	5,100	5,00,054.86	03.09.2007- 01.10.2007	06.10.2007	23.01.2008	108
01.10.2007 08.11.2007	2,250	10,02,131.36	05.10.2007- 12.11.2007	17.11.2007	23.01.2008	66

Thus, in view of the aforesaid, there is a violation of regulation 13(6) of PIT Regulations.

11.Hon'ble SAT, in Appeal No.66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI*, has also observed that, "*the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature*".

12.As the violation of the statutory obligation under regulation 13(6) of PIT Regulations has been established, I hold that the Noticee is liable for monetary penalty under section 15A(b) of 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 there under,-

- (a)
- (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 not exceeding five thousand rupees for every day during which such failure continues;*
- (c)

13. While determining the quantum of penalty under section 15A (b), 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.”*

14. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of default by the Noticee, the details of the shareholding of the director and timely disclosure thereof, were of some importance from the point of view of investors as that would have prompted them to buy or sell shares of the Company. The disclosure made under regulation 13(6) of

PIT Regulations by a Company is made public only through Stock Exchange. Therefore, it is mandatory for the Company to give the required information under the aforesaid regulation to the Stock Exchange, so that the said information becomes known to all the investors at large. The objective of the PIT Regulations mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. The purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. The Noticee could not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosure, it had concealed the vital information from the investors

15. I find that there is a delay by the Noticee in submission of the disclosures to BSE under regulation 13(6) of PIT Regulations on 3 (three) occasions as per the details mentioned in paragraph 10. This indicates the repetitive nature of the default committed by the Noticee.

ORDER

16. After taking into consideration all the facts and circumstances of the case, I hereby impose a monetary penalty of Rs.1,00,000/- (Rupees One Lakh only) on the Noticee which will be commensurate with the violation committed by it.

17. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. B.J. Dilip, Deputy General Manager, Integrated Surveillance Department, SEBI, SEBI Bhavan, Plot No. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
18. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

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

PARAG BASU
ADJUDICATING OFFICER