BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER: Order/VV/AK/2022-23/18731-18732]

UNDER SECTION 23 I (2) OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 AND RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of –

M/s Usha Martin Limited (PAN: AABCT0230D)
M/s Tata Steel Long Products Ltd (PAN: AAACU2339M)

In the matter of Usha Martin Limited and Tata Steel Long Products Limited

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A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a complaint dated September 20, 2019. with regard to the transfer of the steel business undertaking from M/S Usha Martin Limited (hereinafter referred to as "**UML/Noticee 1**") to M/S Tata Sponge & Iron Limited (now known as Tata Steel Long Products Ltd. and hereinafter referred to as "**TSLPL/Noticee 2/transferee**"). The complaint inter alia alleged the misrepresentation by Mr Rajeev Jhawar, Managing Director of UML: (a) Managing Director of UML had stated to the media that any liabilities that arise from the conclusion of the case in which ED was investigating would be on UML not TSIL. (b) This is contrary to the letter dated March 9, 2019 (Approval Letter) issued by Department of Mining, Government of Jharkhand (hereinafter referred to as "**GoJ**") while approving the transfer of the Vijay-II Iron Ore Mines of UML located in Tahsil Ghatkuri, West Singhbhum, Jharkhand, having total area of 383.20 Acre (155.078 Ha) to TSLPL which stated that the final judgement in the above case shall be borne by TSIL. (c) The above condition also forms a part of the Royalty Clearance Certificate (Certificate)

executed between DMO, Chaibasa, Jharkhand, TSLPL and UML on May 25, 2019 (d) Both UML and TSLPL have also given an undertaking to accept the terms and conditions of the aforementioned GoJ letter dated March 9, 2019. Accordingly, SEBI sought clarification from Noticees. On the basis of responses received SEBI decided to initiate instant adjudication proceeding.

2. In the instant proceedings Business Transfer Agreement (hereinafter referred to as "**BTA**") was executed between UML and TSLPL. Enforcement Directorate (hereinafter referred to as "**ED"**) was investigating a case against UML under Prevention of Money Laundering Act, 2002 and attached assets worth Rs. 190.36 crore vide its provisional order dated August 09, 2019, which was later confirmed by the Adjudicating Authority vide order dated January 10, 2020.

B. APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as the Adjudicating Officer vide communiqué dated November 25, 2020 under the section 23I of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCR Act**') read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter, referred to as "**SCRA Adjudication Rules**") to inquire into and adjudge under the provisions of Section 23E of the SCR Act read with Section 21 of the SCR Act and Clause 2 of the Listing Agreement, the violation of the provisions of Regulations 4(1)(e), 4(1)(h), 4(1)(i), 4(1)(j), 4(2)(b), 4(2)(e), 30(1) and 30(4)(i)(b) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR**") alleged to have been committed by Noticee 1 and Noticee 2.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. Thereafter, a common show cause notice (hereinafter referred to as "**SCN**") dated February 16, 2021 was issued to the Noticees in the instant adjudication proceedings to called upon to show cause as to why an inquiry be not held against them in terms of Rule 4 of the SCR Adjudication Rules read with Section 23-I of the SCR Act and penalty be not imposed under Section 23E of the SCR Act read with Section 21 of SCR Act and Clause 2 of the Listing Agreement for the alleged violations.

5. Written Submission, Inspection, Hearing Opportunity

Table - 1

Noticee Name	**Inspection**	**Written Submission**	**Hearing Concluded**
Noticee 1	------------------	July 01, 2022 & November 16, 2021	June 28, 2022
Noticee 2	May 23, 2022.	Letter dated March 25, 2021, email dated June 03, 2022, Convenience Compilation received on June 07, 2022 and email dated June 14, 2022.	June 07, 2022

6. SCN has been summarised in following paras:

6.1. Based on the responses of the Noticees and further examination, SEBI observed that:

a) The business transfer agreement between UML and TSLPL runs contrary to the approval given by GoJ and no subsequent approval has been taken from the Government by the Noticees to alter the terms of agreement. In view of this, the statement issued by the Managing Director of UML to the media appears as a misrepresentation of facts.

b) The disclosures dated September 22, 2018, April 09, 2019, July 04, 2019 and August 17, 2019 made by UML to the stock exchanges did not have any mention of the fact that the liability arising out of the ED investigation would be on UML.

c) The disclosures dated October 24, 2018, April 09, 2019, May 28, 2019 and July 04, 2019 made by TSLPL had no mention of the aforementioned details regarding liabilities arising out of the ED investigation.

6.2. In view of the above, it is alleged that Noticees failed to disclose details with respect to the approval granted by the GoJ which cast the responsibility of bearing the liability arising out of the outcome of the ED investigation on TSLPL nor about the Business Transfer Agreement in which UML indemnified TSLPL for the liability arising out of the ED investigation.

Aforementioned details should have been disclosed to the investors for enabling them to make judicious investment decisions.

6.3. In light of the above, it is alleged that by not making disclosures to the stock exchanges pertaining to the liabilities arising out of the ED investigation, UML and TSLPL have violated Regulations 30(1) and 30(4)(i)(b) of the LODR Regulations. Further, by not complying with the disclosure requirements under Regulation 30(1) and 30(4)(i)(b), UML and TSLPL have failed to adhere to the Principles governing Disclosures and Obligations of Listed Entity specified in Regulations 4(1) (e), (h), (i), (j) and 4(2) (b) & (e) of LODR Regulations.

7. Submissions made by Noticee 1 and Noticee 2 are summarised below:

7.1. Noticee 1, UML vide letters dated July 01, 2022 and dated November 16, 2021 submitted his reply in the matter, which in brief are as under:

a) *<u>Complainant has no locus standi:</u> Complainant has no locus standi in this matter. Therefore, the SCN ought to be withdrawn on this ground alone.*

b) *<u>No intention to conceal/suppress information:</u> The Company had kept the BTA open for inspection and any interested shareholder / investor could have inspected the terms of such BTA. In this connection it should be appreciated that it is not practically feasible that individual clauses of the BTA are disclosed to the stock exchanges. Hence, the mala fide intention to suppress any information or document from its investors do not arise. As is evident, all material events / developments in relation to the ED proceedings have been appropriately and timely intimated by the Company to the stock exchanges vide disclosures dated September 22, 2018, April 09, 2019 and July 04, 2019.*

c) *On August 16, 2019 the provisional attachment order dated August 9, 2019 issued by the ED was received by the Company, bringing to its notice the registration of an ECIR (equivalent of CBI FIR) against it by the ED. Pursuant to the ECIR, property owned by the Company worth INR 190 crores had been provisionally attached by the ED vide such order. In view of the above, the Company immediately made relevant disclosures to the stock exchanges on August 17, 2019 in terms of the LODR Regulations, intimating the exchanges of its intent to defend the proceedings initiated by the ED and clarifying that the provisional attachment order did not affect the business operations of the Company. It is thus submitted, that by making the aforesaid disclosure, the Company has informed its shareholders and all other stakeholders that the liability would vest in the Company.*

d) *It is further submitted that nowhere in Para B of Schedule III of the LODR Regulations, is it mandatory to make a specific statement stating that the liability would be on the disclosing Company, or to disclose a clause in an inter se agreement between the disclosing company and a counterparty that such liabilities would vest on the disclosing company. Specific clauses in the BTA stating that UML would indemnify TSLPL of any liabilities arising out of the ED Proceedings, is not a specific item that is enlisted for specific disclosure under material litigation with impact.*

e) *No conflict between the BTA and the GoJ Approval*

   i. *There is no conflict at all between GoJ Approval and the indemnity clause in the BTA. The two operate in independent spheres. It is customary for parties to a transaction for sale of a business to allocate risk and liabilities arising out of events already known before the Closing Date, whose outcome is uncertain or unknown, and will arise after the Closing Date. The Noticee undertook to indemnify TSLPL inter-alia for a range of matters including any liability arising out of an adverse outcome in the ED Proceedings, which were in Schedule 22 (the ED proceedings was Item 12 in that list, and there were other areas of risk allocation covered in the indemnity).*
   ii. *There is nothing in the GoJ approval letter that provides that TSLPL cannot claim any indemnity from a third party for the consequences it would have to bear in relation to the ED Proceedings and its obligations to the GoJ; Similarly, while TSLPL would continue to be responsible and liable to the GoJ for any liabilities arising out of the ED Investigation, TSLPL would look to the Noticee to indemnify TSLPL for any liabilities arising out of the various items specified in the BTA including the ED Proceedings;*
   iii. *The indemnity clause and the schedule contained in the BTA which covers indemnities for various other liabilities/potential liabilities including that emanating from the ED Proceedings, is a contractually secured right by the transferee from the transferor, indemnifying and holding harmless the transferee in case the ongoing ED Proceedings fructifies into a liability in the future which affects the steel business undertaking being transferred (which includes, as a part thereof, the transfer of such mining lease);*
   iv. *Noticee submitted that Indemnity clauses are a standard market practices and are routinely used in commercial agreements.*

f) *SCN vitiated by an error: The Indemnity clause did not warrant special highlighting in the disclosures*

   i. *In the instant case, shareholders were indeed made aware of the existence of the customary indemnity clause and the agreement itself was made available for inspection by shareholders. Besides two different listed companies with different compositions of boards of directors believed that there was nothing in the indemnity provisions that warranted a special highlighted disclosure.*
   ii. *Legislated framework of disclosures in the LODR Regulations read with Schedule III which does not require agreements in the ordinary course of business to be disclosed since this is information that any reasonable*

investor is likely to be aware of and would factor into their investment decisions. It is only agreements which are outside the ordinary course of business, that are required to be disclosed.

iii. *SEBI's intent behind the disclosure regime is to ensure there is no information asymmetry. To assume that investors would be unaware of standard indemnity clauses in transactions is to take an extremely cynical view of a reasonable investor's intelligence and knowledge.*

iv. *Regulation 30 of the LODR Regulations has been carefully structured to confer a discretion on the board of directors of a listed company to apply the test of materiality and come to a conclusion as to materiality of events covered in para B of Schedule III of the LODR Regulations. This is a professional judgment call and one that was arrived at collectively by the Boards of two separate and independent listed companies – the Noticee and TSLPL – that the information was not material. When two views are possible on a given state of facts, merely because the regulator has a different view much later in time, and that too on a motivated family disputant making a complaint, it cannot be ground to visit the Noticee with a penalty;*

v. *the existence of the customary indemnity provisions was indeed made known to the public. Shareholders of the Noticee were in fact informed of the BTA including the fact that there was an indemnity clause which was customary in a transaction of this kind. This was disclosed as part of the explanatory statement appended to a notice dated September 24, 2018, convening an extra-ordinary general meeting ("EGM Notice") for seeking approval of the shareholders for transfer of the business under the BTA. In fact, the entire BTA was also made available for inspection at the office of the Noticee.*

vi. *The EGM Notice containing the above referred explanatory statement was also sent to the exchanges on October 10, 2018 and posted on the website of the stock exchanges.*

vii. *Therefore, even assuming for the sake of argument that there was a requirement to disclose the same, since there has indeed been a disclosure and an opportunity to the shareholders to even inspect the BTA, the charge of non-disclosure is vitiated by a factual error and on this ground alone, the Noticee is liable to be discharged.*

g) *<u>SCN has wrongly charged the Noticee with Section 23E of the SCRA</u>*

i. *Section 23E has nothing to do with disclosures to stock exchanges under Regulation 30 of the LODR Regulations. Contraventions of disclosures under listing conditions are covered by Section 23A(a) and not by Section 23E. For this purpose, Noticee placed reliance on Hon'ble Securities Appellate Tribunal order in the matter of **Suzlon Energy Limited and Anr. vs SEBI** (Appeal No. 201 of 2018, decided on May 3, 2021) and Adjudicating Officer (SEBI) order in the matter of **Reliance Industries Limited** wherein reliance has been placed on the judgement of the Hon'ble SAT in Suzlon(Supra).*

h) *<u>Mitigating Factors:</u> Noticee placed reliance on judgment of Supreme Court of India in* ***Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari,*** *(2019) 5 SCC 90 and mentioned the following mitigating factors:*

i. *We have not violated any substantive provision of law.*
ii. *SCN do not allege that the Company has made any disproportionate gain or gained any unfair advantage on account of the alleged violations.*
iii. *We have not made any unfair gain or advantage in any manner.*
iv. *The alleged non-disclosure on our part is not repetitive in nature.*

7.2. Noticee 2, TSLPL vide letters/email dated March 25, 2021 and dated June 03, 2022, submitted his reply in the matter, which in brief are as under:

a) *The ED investigation and the GoJ Approval do not come within the items specified in Para A or Para B of Part A Schedule III of the LODR Regulations. Any allegation of breach of disclosure requirements in respect of non-specified events/ information would have to satisfy each limb of the triple test for adjudication of any penalty: (a) There was an event/ information; and (b) The "Opinion" of the authorised persons was neither reasonable nor in good faith; and (c) The event/ information ought to have been considered material in the facts and circumstances by the authorised person acting reasonably and in good faith while forming its opinion. It is Noticee 1 case that none of the elements of the triple test underlying a disclosure obligation is satisfied in the present facts.*

b) *TSLPL has been specifically indemnified by UML under the Business Transfer Agreement ("BTA") in case of any liability or loss arising out of the ED investigation. In simplest terms, it means that if there is any monetary loss or liability arising out of the ED investigation, it will be borne by UML and not TSLPL. Such an indemnity construct is specifically contemplated under Section 124 of the Indian Contract Act, 1872 and it is settled law that such contracts are ordinary course, legal, valid and enforceable.*

c) *The GoJ Approval is not contrary to the terms of the BTA. The GoJ Approval is limited to and mandates TSLPL's monetary obligation vis-à-vis the ED. The BTA sets out TSLPL's recourse against UML in the event it suffers any loss on account of a monetary payment to the ED. In other words, ED can pursue TSLPL for payment, and if so, TSLPL can pursue UML for indemnification. The GoJ Approval does not, and cannot, have the effect of amending a private* *contract of monetary indemnification of loss between TSLPL and UML. Notably, the parties are ad idem that the ultimate liability would vest with UML and not TSLPL, as recorded in the Show Cause Notice.*

d) *In the present case, there was no potential event requiring disclosure for TSLPL since irrespective of the outcome of the ED investigation, no liability would have to be booked by TSLPL (i.e. no liability would be borne indirectly by its investors).*

e) *it is submitted that no penalty ought to be imposed on TSLPL since the factors set out in Section 23J of the SCR Act in respect of levy of penalty are not met in the present case.*

8. <u>Relevant provisions</u>

8.1. ***SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015***

Disclosure of events or information.

30 (1) *Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.*

30(4)(i) *The listed entity shall consider the following criteria for determination of materiality of events/ information:*

(a)……………………………………

(b) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;

Principles governing disclosures and obligations.

4. (1) *The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:*

(……)

(e) *The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.*

…..

(h) *The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders*

(i) *Filings, reports, statements, documents and information which are event based or are filed periodically shall contain relevant information:*

(j) *Periodic filings, reports, statements, documents and information reports shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity.*

4(2)(b) Timely information: *The listed entity shall provide adequate and timely information to shareholders, including but not limited to the following:*

(i) sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be discussed at the meeting.

(ii) Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership.

(iii)rights attached to all series and classes of shares, which shall be disclosed to investors before they acquire shares.

4(2)(e) Disclosure and transparency: *The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity, in the following manner:*

…………………………………

(ii) Channels for disseminating information shall provide for equal, timely and cost-efficient access to relevant information by users…

8.2. ***SCR Act, 1956***

Conditions for listing.

21.*Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.*

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.*

8.3. ***Listing Agreement***

2- That without prejudice to the above clause, the Issuer hereby covenants and agrees that it shall comply with the following: –

i. the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and other applicable regulations /guidelines/circulars as may be issued by SEBI from time to time.

ii. the relevant byelaws / regulations / circulars / notices / guidelines as may be issued by the Exchange from time to time.

iii. such other directions, requirements and conditions as may be imposed by SEBI / Exchange from time to time.

D. <u>CONSIDERATION OF ISSUES</u>

9. I have carefully perused the charges levelled against the Noticees in the SCN, their replies and the material/documents available on record. I am of the view that in the instant matter, the following issues arise for consideration and determination: -

   Issue1: Whether the Noticees have violated the regulation 30(4) of LODR Regulations read with section 21 of SCRA.

   Issue2: If answer to the issue 1 if affirmative, do the violations, if any, on the part of the Noticees attract monetary penalty under section 23E of SCRA for the alleged violation? and, if so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 23J of SCRA?

10. Noticees Contended that complainant has no locus standi in the instant proceeding. In this regard, I note that the instant adjudication proceeding has been initiated by SEBI after doing its independent investigation and thereafter, recommended for adjudication. Accordingly, competent authority has approved the appointment of undersigned in the instant matter and accordingly, SCN has been

issued to the Noticees under SCR Act. Thus, such contention of the Noticees has been bereft of any merit.

11. I note that SEBI has been given the mandate to protect the interest of investors and promote the development of, and to regulate, the securities market. For this purpose, SEBI has ensured that in order to enable investors to make well-informed investment decisions, timely, adequate and accurate disclosure of information on an ongoing basis is essential. The stock exchange is informed so that the investor will come to know of the position enabling them to stick on with or exit from the company. Timely disclosures of the details of the shareholding of the persons acquiring/transferring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions.

12. Noticee submitted that non-disclosure of specific indemnity clause is a professional judgment call and one that was arrived at collectively by the Boards of two separate and independent listed companies *i.e.* the Noticees that the information was not material. In this regard, I note that Regulation 30(1) of LODR has given discretion to the Board of direction but this discretion cannot be meant as unfettered discretion. For the purpose of regulations 30, the material information has to be disclosed on a case to case basis depending upon the various facts specific to the case and circumstances relating to the case. It is trite law that whenever discretion has been conferred to some authority it shall be required that such discretion be exercised reasonably. For illustration purpose I am of the view that one should look that whether the particular information affect the interest of investor or whether it create doubt in the mind of investor in the securities market. I note that it is not possible for the regulator like SEBI to keep each and every contingency in the form of rules. For that purpose, SEBI has made regulation 30(4)(i)(b) which provide guidance to decide materiality. Regulation 30(4)(i)(b) states that listed company shall consider disclosure of information which is likely to result in significant market reaction if the said omission came to light at a later date. It helps in creating a more disclosure based regime and fulfil the mandate of SEBI as mentioned in the preamble of SEBI Act, 1992. Thus, I find that SEBI has laid down the rule as well as principle based regulations under LODR. Thus such contention of Noticee 2 is of no use.

13. It alleged in the SCN that there is conflict between the approval letter dated March 9, 2019 granted by GoJ (Hereafter referred to as "**GoJ Approval Letter**") and the BTA executed between Noticees. In this regard I note the relevant para of GoJ approval letter and BTA agreement has reproduced below:

GoJ approval letter

"*20. The enforcement Directorate has sought documents and information vide F.No. PTZO/03/2017/1255 dated 20.06.2017 and letter no. F.No. PTZO/03/2017/1477 dated 14.08.2017 with regard to investigation under the Prevention of Money Laundering Act, 2002. This case shall be affected by the final outcome of the investigation and order passed in this regard and that shall be borne by the transferee company*."

Clause 14.18 of the BTA

14.18 Specific Indemnity

Notwithstanding the generality of the provisions set out at Clause 14.1 above and notwithstanding anything to the contrary contained herein, and notwithstanding what is Disclosed, the Seller shall indemnify and hold harmless each of the Indemnified Parties against any loss incurred or suffered by them, from time to time, which related to or arises out of any of the matters set out in Schedule 22...

Schedule 22 of the BTA

…………

(12) Any Loss arising out of or in connection with proceedings initiated by the Enforcement Directorate in relation to the Business Undertaking."

14. From the perusal of the above conditions as mentioned in the GoJ approval letter and BTA agreement, I am of the view that as per the GoJ Approval Letter whatever liability would arise in relation to the ED proceedings, transferee *i.e.* TSLPL would be liable and due to the indemnity clause TSLPL has right to get indemnified by the transferor in terms of BTA. Thus, I find no contradiction between GoJ Approval letter and BTA. It is also noted that indemnity is having feature of having one contract between the indemnifier and indemnified, and can be exist independent from any other contract.

15. I note that in the present case, the SCN alleges that Noticees has failed to disclose the material information *i.e.* who will have borne the liability arises out of the ED proceedings. As per the SCN disclosure dated September 22, 2018 April 09, 2019, July 04, 2019 August 17, 2019 By UML and disclosure dated October 24, 2018, April 09, 2019, May 28, 2019 and July 04, 2019 by TSLPL to stock exchange has no mention about the fact that the liability arising out of the ED proceeding would be on UML.

16. From the perusal of records, I note that, Noticee 1 in the disclosure dated August 17, 2019 clearly disclosed on the platform of stock exchange that ED has passed an order dated Aug 09, 2019 against the Company. In pursuant to this Noticee 1 also disclosed the confirmatory order passed by Adjudicating Authority order dated on January 10, 2020. This has been disclosed on the stock exchange platform in terms of regulation 30 of LODR by *vide* disclosure dated January 21, 2020.

17. Further, Noticee 1 also submitted that explanatory statement dated September 24, 2018 convening an extra-ordinary general meeting (Hereinafter referred to as "**EGM Notice**") for seeking approval of the shareholders for transfer of the business under the BTA. The relevant provisions of the same has been mentioned below:

"*The Company has identified its steel business as an 'undertaking' in terms of Section 180(1)(a) of the Act and therefore requires members' approval by way of 'Special Resolution' for disposal of the said business undertaking. The Company is in significant debt and the objective of the sale of the steel business undertaking (inter-alia comprising of a steel manufacturing facility, an operative iron ore mine situated at Ghatkuri block, coal mine under development in the Brinda and Sisai districts and captive power plants) situated in the State of Jharkhand would be to reduce the debt burden of the Company. Further, post divestment of the steel business undertaking and repayment of existing lenders, the Company will operate a significantly deleveraged Wire & Wire Rope Business*.

Tata Steel Limited is a reputed business house already having experience in steel business and have shown interest in buying the steel business undertaking by itself or through a subsidiary ('Purchaser') through slump sale on going concern basis. The Board of the Company at their Meeting held on 22 September 2018, accorded *their approval to sale so that the residual business of the Company i.e. Wire & Wire Rope Business gets the requisite opportunity to grow to their full potential and create value for the Company in the overall interest of all stakeholders. The Company will seek for a long term contract with the Purchaser for supply of wire-rods post consummation of the sale of steel business undertaking. The net proceeds from the sale of the steel business undertaking will be utilised to repay existing lenders of the Company.* ***<u>In this relation, the Company has entered into a business transfer agreement with Tata Steel Limited on 22 September 2018 ('Agreement').</u>***

Some of the significant terms of the BTA are set out below.

…

Key conditions precedent: *The aforesaid sale of the steel business undertaking shall be subject to fulfilment of certain conditions precedent, which include approvals/ consents from the Government of Jharkhand and local authorities, Adityapur Industrial Area Development Authority, the Competition Commission of India, the lenders of the Company and approvals from the Government and nominated authorities for transfer of the iron ore and coal mines respectively.* *<u>Additionally, there are representations, warranties and indemnity related provisions incorporated in the Agreement which are customary in transactions of this nature. (emphasis supplied)</u>*

The Agreement shall remain available for inspection by shareholders on working days between 11 AM to 2 PM at the registered office"

18. The above EGM Notice containing the above referred explanatory statement was also disclosed through exchanges platform on October 10, 2018 in terms of Regulation 30 of LODR. Thus, I find that indemnity clause has been disclosed since it is mentioned in the BTA and it does not require separate disclosure in the context of present facts and circumstances. At the same time, it is noted that TSLPL has not notified on stock exchanges about aforesaid ED proceedings. Additionally, Noticee 1 has disclosed the information related to ED proceedings on stock exchanges in terms of regulation 30 of LODR.

19. In the view of the above facts and circumstance, I find that it is difficult to conclude that the Noticees have failed to make adequate disclosure with respect to the liability arising out of ED proceedings and thus, depriving investors of material information for investment decision making.

20. In the view of the above, I find that Noticees have not violated regulations 30(1) and 30(4)(i)(b) of LODR regulations. Thereby, the violation of principles' as mentioned in regulations 4(1)(e), 4(1) (h), 4(1) (i), 4(1) (j) and 4(2)(b) & 4(2)(e) of LODR cannot be established qua Noticees.

E. Order

21. For the aforesaid reasons, Show Cause Notice dated February 16, 2021 alleging the violation of the provisions of Regulations 4(1)(e), 4(1)(h), 4(1)(i), 4(1)(j), 4(2)(b), 4(2)(e), 30(1) and 30(4)(i)(b) of the LODR Regulations by the Noticees *i.e.,* M/s Usha Martin Limited and M/s Tata Steel Long Products Ltd is disposed of without imposition of penalty.

22. In terms of rule 6 of the SCRA Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: August 30, 2022 **VIJAYANT KUMAR VERMA**
Place: Mumbai **ADJUDICATING OFFICER**