BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2023-24/29496]

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) RULES, 1995

In respect of

Mr. Prashant Boorugu

[PAN: AAOPB7558E]

In the matter of Metkore Alloys and Industries Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination with respect to trading in the scrip of Metkore Alloys and Industries Ltd. (hereinafter referred to as '**Metkore/Company'**). Pursuant to the aforementioned examination, SEBI found that Mr. Prashant Boorugu (hereinafter referred to as **'Noticee/By Name'**) had allegedly violated the provisions of Regulation 3(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations'**) in respect of his trading in the scrip of Metkore. The shares of the Company are listed on BSE Ltd. (hereinafter referred to as "**BSE**") and National Stock Exchange of India Ltd (hereinafter referred to as "**NSE**") (Collectively referred to as "**Exchanges**").

2. Therefore, SEBI initiated adjudication proceedings against Noticee under the provisions of Section 15H(ii) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') for the alleged violation of Regulation 3(3) of SAST Regulations by Noticee.

3. SEBI appointed the undersigned as the Adjudicating Officer under Section 15I of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under the provisions of Section 15H(ii) of the SEBI Act, the alleged violation against Noticee.

4. A show-cause notice dated August 31, 2021 (hereinafter referred to as '**SCN**') was issued to Noticee under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon him under the provisions of Section 15H(ii) of SEBI Act, for the aforesaid violation alleged to have been committed by him. Thereafter, on conclusion of the said adjudication proceedings, vide Adjudication Order bearing reference no. Order/SM/AD/2022-23/18029 dated July 27, 2022, a monetary penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) was imposed on Noticee.

5. Thereafter, Noticee preferred an appeal, bearing Appeal No. 933 of 2022, before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**"), challenging the aforementioned adjudication order, grounds of appeal being that he was not served with the SCN and that he was entitled for exemption under Regulation 10 of SAST Regulations and hence there was no violation of Regulation 3(3) of SAST Regulations. Hon'ble SAT vide Order dated August 03, 2023 (hereinafter referred to as "**SAT Order**"), confirmed that Noticee was duly served with SCN, however, considering the documents filed by Noticee before the Tribunal, the matter was remitted back to the adjudication proceedings to reconsider the matter. The relevant extract of SAT Order is reproduced hereunder:

   "*12. For the reasons stated aforesaid, the impugned order is quashed. The appeal is allowed. The matter is remitted to the AO to pass a fresh order considering the Regulation 10 of the SAST Regulations in the light of the documents that will be filed by the appellant. In this regard, the appellant shall appear before the AO on August 21, 2023 and the matter will proceed from there onwards. We also direct the appellant to pay a sum of Rs. 2 lakhs as cost to be paid by the appellant to SEBI for hearing the matter."*

APPOINTMENT OF ADJUDICATING OFFICER

6. Pursuant to the SAT Order, vide order dated August 07, 2023, the competent authority in SEBI once again appointed the undersigned as the Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of Adjudication Rules to inquire into and adjudge, under the provisions of Section 15H(ii) of the SEBI Act, the alleged violation of Regulation 3(3) of SAST Regulations by Noticee.

REPLY AND PERSONAL HEARING

7. Vide email/letter dated August 11, 2023, the appointment of undersigned as Adjudicating Officer in the matter was communicated to Noticee as well as to his authorized representative, Advocate Loknath Mishra (hereinafter referred to as '**AR**'). Further, vide the aforementioned email/letter, Noticee was also advised to appear before the undersigned on August 21, 2023 and make his submissions in the matter as directed by Hon'ble SAT. Further, Noticee was also directed to file written submissions, if any, in the matter on or before August 21, 2023. The aforementioned email/letter was duly served on Noticee and his AR.

8. Vide email dated August 18, 2023, AR of Noticee requested the undersigned for adjournment to file his written submissions and to appear before the undersigned citing he was out of time and will resume his office only on August 25, 2023. Noticee did not appear before the undersigned on August 21, 2023.

9. However, in the interest of natural justice, vide email dated September 01, 2023, a final opportunity of hearing was granted to Noticee on September 08, 2023. Further, Noticee was granted time till September 07, 2023 for filing written submissions in the matter. The aforementioned email was duly served on Noticee.

10. Thereafter, Noticee submitted his reply to the SCN on September 07, 2023. On the scheduled date of hearing i.e. September 08, 2023, AR of Noticee appeared before the undersigned and reiterated contents of Noticee's reply to SCN.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

11. I have carefully perused the charges levelled against Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

    Issue No. I: Whether Noticee has violated Regulation 3(3) of SAST Regulations taking into consideration Regulation 10 of SAST Regulations?

    Issue No. II: Does the violation, if any, attract monetary penalty under Section 15H(ii) of the SEBI Act?

    Issue No. III: If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

Issue No.11(I)- Whether Noticee has violated Regulation 3(3) of SAST Regulations?

12. Before going into the merits of the case, I would like to state the factual matrix of the case. On July 02, 2015, Noticee, who was the promoter of Metkore at the time of aforementioned transaction, had acquired 1,62,60,304 shares of Metkore from Cronimet Mercon Invest Limited, another promoter of Metkore.(The aforementioned transaction is hereinafter also referred to as " "**acquisition dated July 02, 2015**"). For the quarter ending June 2015, the Noticee was holding 30,00,000 shares of Metkore and the same amounted to 4.26% of the total shareholding of Metkore as on June 30, 2015. By virtue of his acquisition of shares from Cronimet Mercon Invest Limited, the total shareholding of the Noticee in Metkore increased to 1,92,60,304 i.e. 27.35% of the total shareholding of the Company. Thus, shareholding of Noticee in Metkore increased from 4.26% to 27.35% pursuant to the transfer of 1,62,60,304 shares of Metkore from Cronimet Mercon Invest Limited to Noticee.

13. I note that Noticee's acquisition of 1,62,60,304 shares of Metkore from Cronimet Mercon Invest Limited had resulted in increase of individual shareholding of Noticee from 4.26% to 27.35% of total shareholding of Metkore and thus, had resulted in breach of threshold limit of 25% prescribed under Regulation 3(1) of SAST Regulations. The issue to be determined in this factual background is whether the said acquisition is exempted from the requirement of making an open offer under the provisions of Regulation 10(1)(a) of the SAST Regulations.

14. Before proceeding further, I find it pertinent to refer to the relevant provisions as they existed at the time of the impugned transaction. Regulation 3(1) of SAST Regulations provides that " *No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.*" Regulation 3(3) of SAST Regulations states that "*For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert*." On combined reading of Regulations 3(1) and 3(3) of SAST Regulations, I note that if an acquisition of shares by a person in a target company results in increase in individual shareholding of such person to a level which entitles him to exercise twenty-five per cent or more of the voting rights of such target company, such person is under an obligation to make a public announcement of an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert. However, I also note that Regulation 10 of the SAST Regulations exempts certain acquisitions from the obligation to make an open offer under Regulation 3 and Regulation 4 of the SAST Regulations, upon satisfying certain conditions as prescribed therein.

15. For the purpose of understanding, Regulation 10(1)(a) of the SAST Regulations, as applicable at the date of transaction of Noticee, is reproduced hereunder:

"10.(1)The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfillment of the conditions stipulated therefor,—
(a) acquisition pursuant to inter se transfer of shares amongst qualifying persons, being,—
(i) immediate relatives;

(ii) persons named as promoters in the shareholding pattern filed by the target company in terms of the listing regulations or as the case may be, the listing agreement or these regulations for not less than three years prior to the proposed acquisition;

(iii) a company, its subsidiaries, its holding company, other subsidiaries of such holding company, persons holding not less than fifty per cent of the equity shares of such company, other companies in which such persons hold not less than fifty per cent of the equity shares, and their subsidiaries subject to control over such qualifying persons being exclusively held by the same persons;

(iv)persons acting in concert for not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing agreement;

(v)shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing agreement, and any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential entitlement to exercise voting rights in such company

***Provided** that for purposes of availing of the exemption under this clause,—*

(i)If the shares of the target company are frequently traded, the acquisition price per share shall not be higher by more than twenty-five per cent of the volume-weighted average market price for a period of sixty trading days preceding the date of issuance of notice for the proposed inter se transfer under sub-regulation (5), as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, and if the shares of the target company are infrequently traded, the acquisition price shall not be higher by more than twenty-five percent of the price determined in terms of clause (e) of sub-regulation (2) of regulation 8; and

(ii) the transferor and the transferee shall have complied with applicable disclosure requirements set out in Chapter V."

16. In order to understand the regulatory intent and spirit behind the open offer process under SAST Regulations, I find it pertinent to mention the brief legislative history behind the enactment of SAST Regulations. In the year 2010, SEBI constituted a committee called the "Takeover Regulations Advisory Committee' (**TRAC**) which was headed by Mr. C. Achuthan,

former Presiding Officer, Securities Appellate Tribunal, to examine and review SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and to suggest suitable amendments therein. Thereafter, TRAC submitted its report (hereinafter referred to as "**Achuthan Committee Report**"), which then became basis of the present SAST Regulations. In the context of inter-se transfer among qualifying persons, I find that the Achuthan Committee Report has stated that *"In respect of inter-se transfers amongst certain qualifying parties as listed and defined under the Takeover Regulations, the Committee recommends that, in order to curb the abuse of introduction of new entities as qualifying parties, in most cases a requirement of pre-existing relationship of at least three years has been prescribed.*"

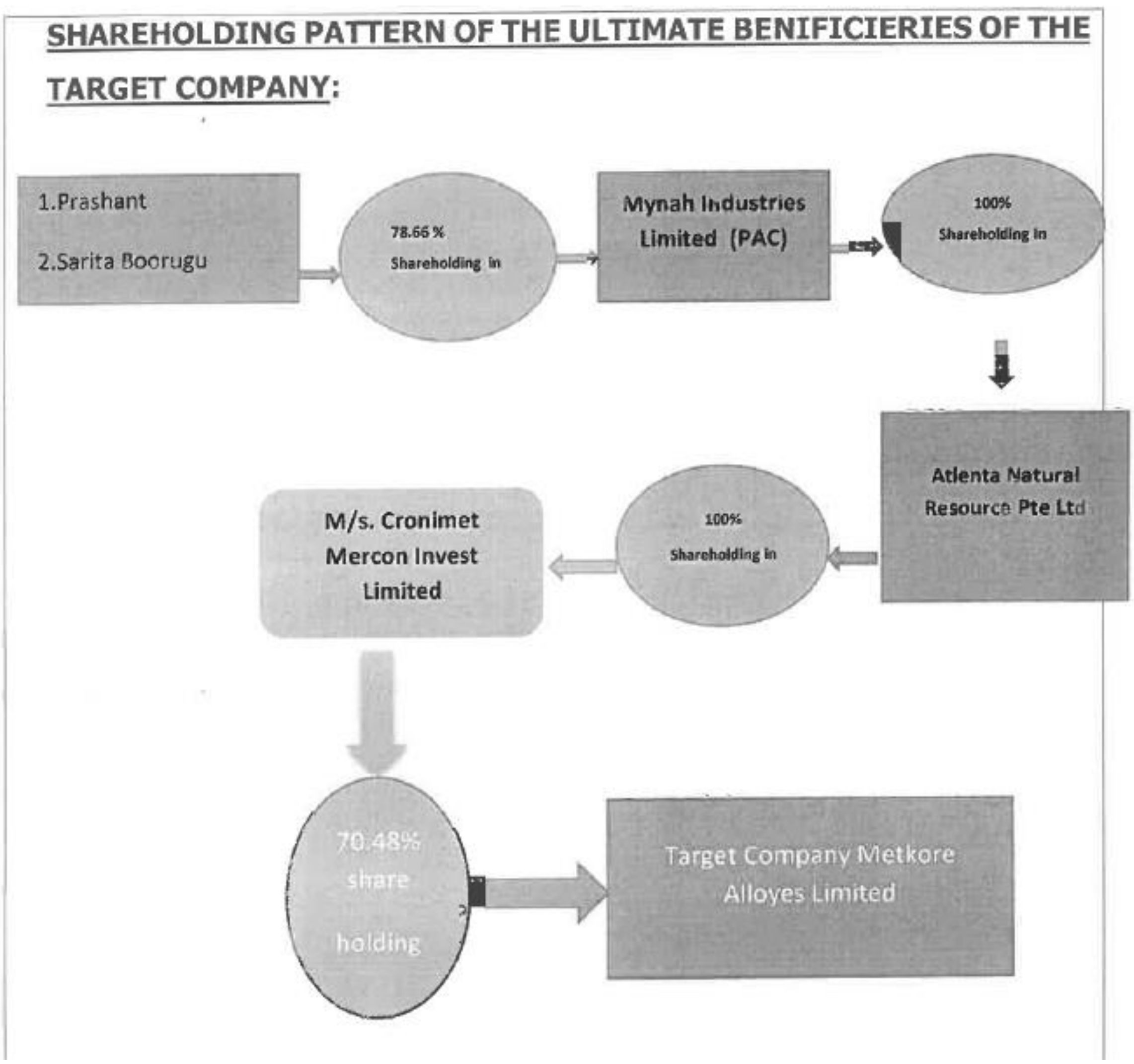
17. I note that while Regulation 10(1)(a) of SAST Regulations specifies certain circumstances under which an acquirer can qualify for the exemption from making an open offer, it also stipulates two conditions which are to be fulfilled for the purpose of availing such exemption. The first condition lays down the parameters for calculation of the price to be arrived at for the acquisition, the rationale being equitable treatment of all shareholders. In the context of determination of acquisition price, I observe that Achuthan Committee Report has emphasized on the need preserve the concept of equity for all shareholders. It has been stated in the said Report that "*the Takeover Regulations have historically regulated the minimum price at which an open offer is required to be made and was unanimous in its view that there is a continued need to stipulate a minimum price that ought to be offered to the shareholders. In fact, one of the fundamental principles underlying the Takeover Regulations is to give public shareholders an exit on terms not inferior to the terms obtained by a substantial shareholder from the acquirer for his large shareholding. Further, the minimum price should also prevent acquirers from building a stake over a period of time without offering that price to shareholders in the offer"………. "The Committee went back to the fundamental objectives of the Takeover Regulations, and finally concluded that the Takeover Regulations need to preserve the concept of equity for all shareholders, and in that context, the offer price payable to public shareholders should be not inferior to that paid for substantial shareholders.."*

18. The second condition in the proviso to Regulation 10(1)(a) of SAST Regulations requires the transferor and the transferee to comply with applicable disclosure requirements as set out in Chapter V of SAST Regulations. In this respect, the Achuthan Committee Report has stated that "*The disclosure obligations under the Takeover Regulations are fairly critical and an important component of the legal regime governing substantial acquisition of shares and takeovers*."….."*The intent behind the disclosure regime is not only to ensure that the target company is not taken by surprise but also to ensure that price discovery in the market for shares of the target company takes place in an informed manner, where the very fact of an interested acquirer increasing his holding would contribute to the emergence of price at which sellers would be willing to sell their shares in the market."*

19. One of the applicable disclosures under Chapter V of SAST Regulations is set out under Regulation 29 of SAST Regulations. Regulation 29(1) of SAST Regulations states that "*Any acquirer who acquires shares* or *voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified".* Regulation 29(2) of SAST Regulations states that "*Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified".* Regulation 29(3) of SAST Regulations provides that required disclosures under Regulation 29(1) and 29(2) of SAST Regulations have to be made within two working days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights in the target company to (a) every stock exchange where the shares of the target company are listed; and (b)the target company at its registered office.

20. In his reply to SCN, Noticee has contended that he was promoter of Metkore from the financial year (**FY**) 2010-11 onwards and on the date of transfer of shares i.e. July 02, 2015, he had completed 3 years as the promoter of Metkore.

21. In support of his contentions, the Noticee has, *inter alia,* placed reliance on the letter of offer dated May 17, 2010 filed by acquirer; Atlanta Natural Resources PTE. Ltd. (**Atlanta**) and person acting in concert (**PAC**); Mynah Industries Limited (**Mynah**). It is stated in Noticee's reply that Atlanta as an acquirer and Mynah as a PAC had acquired 100% shareholding in Cronimet Mercon Invest Limited (which was holding 70.48% in Metkore) as a result of which Atlanta and Mynah acquired indirect control of Metkore. Noticee has further stated that at the time of open offer, Noticee was in the board of directors of both Mynah and Atlanta and was holding 61.11% shareholding in Mynah. Further, the wife of the Noticee, Ms. Sarita Boorugu was holding 17.55% shareholding in Metkore at the time. The relationship as described above has been reduced to pictorial form in Noticee's reply to SCN and is reproduced below:



22. Relying on the relationship of Noticee with Metkore as detailed in the preceding paragraphs and applying the definition of promoter and promoter group as provided under Regulation 2(oo) and 2(pp) of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as "**ICDR Regulations**"), respectively, Noticee has contended that he was the promoter of the Metkore from the end of the open offer process i.e. since June, 2010.

23. In support of his aforesaid contention, Noticee has further placed reliance on the notice of extraordinary general meeting dated October 25, 2010 issued by Metkore, wherein Noticee has been shown as promoter. The extract is reproduced hereunder :

" *c.1. The following proposed allotees are part of promoters group have indicated their intention Subscribe to the warrants:*

Name	***No. of Warrants Interested to subscribe***
1. Mr. Prashant Boorugu	*6,00,000*
2. Mrs. Sarita Boorugu	*6,00,000*
3. M/s. Mynah Industries Limited	*5,60,000*

24. Further, in his reply, Noticee has submitted that in the meetings of the board of directors of Metkore held on February 14, 2011 and August 14, 2012, Noticee has been mentioned/considered as a part of promoter and promoter group. In light of the aforesaid, Noticee has contended that he was qualified for exemptions provided under Regulation 10(1)(a)(ii),10 (1)(a)(iii),10(1)(a) (iv) and 10(1)(a)(v) of SAST Regulations.

25. In this regard, I note from the wordings of Regulation 10(1)(a)(ii), 10(1)(a)(iv) and Regulation 10(1)(a)(v) of SAST Regulations that in order for an acquisition, pursuant to inter-se transfer, to be eligible for exemption from making an open offer under the said provision, such acquisition has to be amongst persons who are named as promoters or PACs or shareholders who are PACs by the target company in terms of its listing agreement or SAST Regulations, for not less than 3 years prior to the proposed acquisition. Going by the wordings of the aforementioned provisions, it is clear that the exemptions under Regulation 10(1)(a)(ii), (iv)

and (v) of SAST Regulations are, in fact, not available to promoters or PACs per se, but only to persons who have been disclosed as promoters or PACs by the target company under the listing agreement on the stock exchange platforms and that too, at least for a period of three years prior to the acquisition. As stated in the Achuthan Committee report, the above requirement of pre-existing relationship of at least three years was introduced in the Takeover Regulations in order to curb the abuse of introduction of new entities as qualifying parties.

26. I note that Noticee has claimed exemption under aforesaid provisions of Regulation 10(1)(a of SAST Regulations by contending that he was the promoter of Metkore from FY 2010-11 onwards. From the records, I find that BSE in its email dated December 20, 2017 had submitted to SEBI that Noticee was shown as promoter in the shareholding pattern of the target company i.e. Metkore only from quarter ended March 31, 2013 to quarter ended December 31, 2015, i.e., less than three years. The aforementioned email of BSE has not been disputed by Noticee. Moreover, Noticee has not produced any evidence to show that he was disclosed as the promoter in the shareholding pattern of the target company for at least three years prior to the date of acquisition, i.e., July 02, 2015. Since Noticee has preferred an appeal before the Hon'ble SAT, stating that he is eligible for exemption under the aforesaid provisions of SAST Regulations, the onus is on him to demonstrate that the transferor/transferee were qualifying persons for the purpose of exemption under Regulation 10(1)(a) of SAST Regulations. In absence of any documents/evidence shown by him in defense of his statement and in absence of any other records in examination in this regard, I am inclined to dismiss his contentions. In this context, I also find it pertinent to place reliance on the decision of Hon'ble Supreme Court in Laurel Energetics Pvt Ltd v SEBI (Date of Decision: July 13, 2017; Civil Appeal No.5675 of 2017) wherein Hon'ble Supreme Court while deciding on whether impugned open offer therein was exempt under Regulation 10 of SAST Regulations has held that :

" Coming back to Regulation 10, it is thus clear that persons named as promoters in the shareholding pattern filed by the Rattan Company in terms of the listing agreement between the two Stock Exchanges is what is to be looked at.

……………………………………………………...

When we come to sub regulations (iv) and (v), it is clear that these two sub regulations follow the pattern contained in sub regulation (ii) in as much as when it comes to persons acting in concert, the period should be not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing agreement. Also, when it comes to shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing agreement, the corporate veil is not lifted. The difference between sub regulations (ii), (iv) and (v) on the one hand, and sub regulation (iii) on the other, again shows us that it is impermissible for the court to lift the corporate veil, either partially or otherwise, in a manner that would distort the plain language of the regulation. Where the corporate veil is to be lifted, the regulation itself specifically so states. For this reason also, it is a little difficult to accept Mr. Vishwanathan's argument that a reading of the other sub regulations contained within regulation 10 (1) (a) would further his argument in this case."

27. At this juncture, I find it important to revisit the fundamental objectives of the SAST Regulations as drafted by the TRAC, some of which are:-

    a. *To provide a transparent legal framework for facilitating takeover activities;*

    b To protect the interests of investors in securities and the securities market, taking into account that both the acquirer and the other shareholders or investors and need a fair, equitable and transparent framework to protect their interests;

    c. To balance the various, and at times, conflicting objectives and interests of various stakeholders in the context of substantial acquisition of shares in, and takeovers of, listed companies.

    d. To provide each shareholder an opportunity to exit his investment in the target company when a substantial acquisition of shares in, or takeover of a target company takes place, on terms that are not inferior to the terms on which substantial shareholders exit their investments;

    e. To ensure that fair and accurate disclosure of all material information is made by persons responsible for making them to various stakeholders to enable them to take informed decisions.

28. Disclosure of material information as stipulated under Regulation 10(1)(a) of SAST Regulations, therefore, assumes great significance in light of the fundamental principle of fairness, transparency and equity on which the Takeover Code is modeled.

29. In the light of the fact that Noticee was not shown as promoter or PAC with Cronimet Mercon Invest Limited by Metkore for at least three years prior to the acquisition dated July 02, 2015, I find that the Noticee does not qualify for exemption under Regulation 10(1)(a)of SAST Regulations, even though he might have been the promoter of Metkore as contended by him within the meaning of Regulation 2(oo) and 2(pp) of ICDR Regulations from FY 2010-11 onwards.

30. However, even for arguments' sake, if I were to consider that the Noticee qualifies for exemption under Regulation 10(1)(a) of SAST Regulations, then the next issue to be determined is whether the conditions stipulated as provisos to the said regulation are also fulfilled by Noticee. It is noted that the first proviso to Regulation 10(1)(a) of SAST Regulations requires fulfillment of pricing condition in the inter-se transfer of shares between persons qualifying for exemption. On perusal of available records, I find that there are no documents to indicate the price at which the impugned acquisition has taken place and so, I am unable to ascertain the acquisition price of the shares acquired by Noticee in the impugned transaction and consequently, unable to determine whether the price of acquisition was in terms of the aforesaid condition. In his submissions in the instant adjudication proceedings also, the Noticee has not produced any evidence or record to indicate that he has complied with the first condition pertaining to the acquisition price of shares, which enables him to avail exemption under Regulation 10(1)(a) of SAST Regulations, assuming he was a qualified person under the regulation, although it has already been established that he does not meet with the criteria to qualify for such exemption. Since the onus is on Noticee to demonstrate compliance of the aforementioned condition for availing exemption, absence of the same in his submissions, therefore, makes it abundantly clear that Noticee has not fulfilled the first overriding condition for him to avail the exemption under Regulation 10 (1)(a) of SAST Regulations.

31. The second condition in the proviso to Regulation 10(1)(a) of SAST Regulations requires the transferor and the transferee to comply with applicable disclosure requirements as set out in Chapter V of SAST Regulations. Thus, in terms of the second condition, Noticee, being the transferee, as well as Cronimet Mecron Invest Limited, being the transferor, were under an obligation to make applicable disclosure requirements set out in Chapter V of SAST Regulations.

32. I find that Noticee has not produced any evidence of either transferor or transferee having complied with the requirement of disclosures as mandated under Chapter V of SAST Regulations with respect to the impugned share transaction. In fact, I note that in an earlier proceeding initiated by SEBI, vide Adjudication Order dated February 08, 2018, Noticee was found to have violated Regulation 29(1) read with Regulation 29(3) of SAST Regulations and Cronimet Mecron Invest Limited was found to have violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations with respect to acquisition dated July 02, 2015 and monetary penalties were imposed on them. The aforementioned Adjudication Order was not challenged by Noticee and Cronimet Mecron Invest Limited in higher forum and hence, the aforesaid Adjudication Order became final against them. Thus, I find that second condition stipulated in proviso to Regulation 10(1)(a) of SAST Regulations has not been met as both the transferor i.e. Cronimet Mecron Invest Limited and transferee i.e. Noticee have not complied with applicable disclosure requirements set out in Chapter V of SAST Regulations with respect to the acquisition dated July 02, 2015.

33. In light of the observations in the preceding paragraphs, I find that as the Noticee failed to fulfill or satisfy the conditions to avail of exemption from open offer obligations in terms of Regulation 10(1)(a) of SAST Regulations, Noticee was under an obligation to make open offer in respect of the impugned transaction in terms of Regulation 3(3) and Regulation 3(1) of SAST Regulations. However, available records show that no public announcement for open offer was made by Noticee for aforesaid acquisition of shares of Metkore as mandated under Regulation 3(1) of SAST Regulations. Noticee has also not disputed the aforementioned fact.

34. In light of the foregoing, I find that Noticee failed to make a public announcement for open offer under Regulation 3(3) of SAST Regulations read in context of Regulation 3(1) of SAST Regulations. Therefore, I find that allegation in the SCN that Noticee has violated Regulation 3(3) of SAST Regulations stands established.

Issue No. II: Does the violation, if any, attract monetary penalty under Section 15H(ii) of the SEBI Act?

35. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established..….".*

36. Therefore, in view of the above judgment and considering that Noticee violated Regulation 3(3) of SAST Regulations, as established in the foregoing paragraphs, I find that Noticee would be liable for monetary penalty under Section 15H(ii) of the SEBI Act. The text of Section 15H of the SEBI Act is reproduced below:

SEBI Act

15H. If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

(ii) make a public announcement to acquire shares at a minimum price;

(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,

he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Issue No. III - What should be the quantum of monetary penalty?

37. While determining the quantum of penalty under Section 15H(ii) of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J *- While adjudging quantum of penalty under section 15-I or section 11 or section 11B, the Board or 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 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.*

38. In view of the charges established and the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticee in making

open offer or the consequent loss caused to investors as a result of the default. Further, I note that there is nothing on record to indicate that the violation of Noticee is repetitive in nature. Though it may not be possible to ascertain the monetary loss to the investors on account of the default by Noticee, I note that timely public announcement by Noticee would have been of significant importance from the point of view of the investors as that would have provided them with opportunity to decide whether to continue or exit from the company at that point of time. I note that losing an exit opportunity by the shareholders at the right time as a result of the failure on the part of the Noticee to make the public announcement under the SAST Regulations, is a loss to the investors. I am of view that such serious violation requires penalty commensurate with the offence.

ORDER

39. Having considered all the facts and circumstances of the case, the material available on record and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs) on Noticee i.e. Mr. Prashant Boorugu, under the provisions of Section 15H(ii) of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

40. Noticee 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 online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

41. Noticee shall forward said Demand Draft or said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - IV,

Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

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)	

42. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee.

43. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee viz. Mr. Prashant Boorugu and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**
Date: September 27, 2023 **ADJUDICATING OFFICER**