

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. ORDER/AK/AS/2022-23/22132-22139**

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 IN RESPECT OF;

S No	Name of Noticee
1	B.K. Narula HUF (PAN: AAAHB4455L) <u>Address:</u> M 15, Green Park Main, New Delhi-110016 <u>Email:</u> bknarula@orosil.com
2	Rita Narula (PAN: AABPN9041M) <u>Address:</u> D-92, First Floor, Defence Colony, New Delhi-110024 <u>Email:</u> ritanarula@orosil.com, bhushanknarula@gmail.com
3	M/s Srinidhi Infra Pvt Ltd (earlier known as Solar Renewable Urja Pvt Ltd) (PAN: AANCS7337J) <u>Address:</u> Flat no. 620, Hemkunt Chambers 89, Nehru Place, New Delhi 110019 <u>Email:</u> info@orosil.com
4	M/s Sukarna Finance Ltd (PAN: AAACS3512L) <u>Address:</u> A-89, Sector-2, Noida, Uttar Pradesh-201301 <u>Email:</u> bknarula@orosil.com
5	B.K. Narula (PAN-AABPN9040L) <u>Address:</u> D-92, First Floor, Defence Colony, New Delhi-110024 <u>Email:</u> bhushanknarula@gmail.com, ritanarula@orosil.com
6	Sidhi Narula (PAN-AAEPN0229N) <u>Address:</u> M 15, Green Park Main, New Delhi-110016 <u>Email:</u> bknarula@orosil.com
7	Xtreme Retails Limited (PAN-AAACB3156B) <u>Address:</u> M 15, Green Park Main, New Delhi-110016 <u>Email:</u> bknarula@orosil.com

S No	Name of Noticee
8	Ridhi Narula (PAN-ACKPN7385D) <u>Address:</u> M 15, Green Park Main, New Delhi-110016 <u>Email:</u> ridhin@hotmail.com, bknarula@silversmithindia.com, ridhi_n82@yahoo.com

In the matter of Orosil Smiths India Ltd

BACKGROUND OF THE CASE

- Orosil Smiths India Limited (hereinafter referred to as "**Orosil**") is a company having Registered Office at Flat No. 620, Hemkunt Chambers, 89, Nehru Place, New Delhi- 110019. The shares of Orosil are listed on BSE Limited (hereinafter referred to as "**BSE**"). It was observed that promoters of Orosil as on September 30, 2008, viz. B.K. Narula HUF (**Noticee No: 1**), Rita Narula (**Noticee No: 2**), M/s Srinidhi Infra Pvt Ltd (earlier known as Solar Renewable Urja Pvt Ltd) (**Noticee No: 3**), M/s Sukarna Finance Ltd (**Noticee No: 4**), B.K. Narula (**Noticee No: 5**), Sidhi Narula (**Noticee No: 6**), Xtreme Retails Limited (Earlier known as B.K. Overseas Ltd) (**Noticee No: 7**) and Ridhi Narula (**Noticee No: 8**), had allegedly not complied with the directions issued, vide SEBI Order dated May 13, 2015 ref no WTM/RKA/EFD-DRA-II/44/2015 (hereinafter referred to as "**WTM Order**"), resulting in violation of provisions of Regulation 11(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations**"). (Noticee No. 1 to 8 shall hereinafter be collectively referred to as "**Noticees**")

APPOINTMENT OF ADJUDICATING OFFICER

- Upon being satisfied that there were sufficient grounds to inquire and adjudicate upon the violation of provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and Regulation framed

thereunder by the Noticees, SEBI, in exercise of powers u/s 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the “**Adjudication Rules**”), r/w section 19 of the SEBI Act appointed Ms. Geetha G., as the Adjudicating Officer (hereinafter referred to as the “**AO**”), vide order dated March 24, 2022. Pursuant to transfer of Ms. Geetha G., SEBI appointed undersigned as AO, vide order dated August 29, 2022.

SHOW CAUSE NOTICE AND PERSONAL HEARING

3. A common Show Cause Notice dated July 21, 2022 (hereinafter referred to as “**SCN**”) was issued against the Noticees, wherein it was alleged that the Noticees have violated provisions of Section 11(2) of the SAST Regulations. The allegations levelled in the SCN are as under;

- 3.1 The promoters of Orosil, who are Noticees in the instant matter, as on September 30, 2008, collectively held 23,91,455 equity shares constituting 57.88% of the share capital of Orosil. Through a series of acquisitions, Noticees acquired 4,96,069 equity shares of Orosil between October 2008 and September 2010, which led to an increase in the shareholding of Noticees as per the details given below:

S No	As on date	Promoter's shareholding	No of shares held	Total equity capital
1	September, 2008	57.88%	23,91,455	41,31,600
2	September, 2010	69.89%	28,87,524	

- 3.2 On June 06, 2009, B.K. Narula HUF (Noticee No: 1) acquired 20,637 equity shares of Orosil whereby the collective shareholding of the promoter group in the target company increased by 5.48%, i.e. from 57.88% to 63.36%. As per the provisions of Regulation 11(2) of the SAST Regulations, the acquirer along with persons acting in concert are mandated to make public announcement to acquire the shares, in case the acquisition exceeds the limit of 5%. Therefore,

the acquisition by B.K. Narula HUF (Noticee No: 1) on June 06, 2009 resulted in breach of said limit of 5%, triggering the obligation to make a public announcement under Regulation 11(2) read with Regulation 14(1) of the SAST Regulations within 4 working days from June 06, 2009. However, B.K. Narula HUF (Noticee No: 1), i.e., the acquirer along with persons acting in concert, failed to make the requisite public announcement.

3.3 In view of above, proceedings under Sections 11 and 11B of the SEBI Act were initiated against the Noticees. Vide the said proceedings, Noticees were called upon to show cause as to why suitable directions under Sections 11 and 11B of the SEBI Act and Regulations 44 and 45 of the SAST Regulations read with Regulations 32 and 35 of the SAST Regulations should not be issued against them. Upon culmination of the proceedings, the WTM, SEBI passed an Order on May 13, 2015 with, inter alia, the following directions to the Noticees;

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(a) *“The Noticees shall make a public announcement to acquire shares of the target company in accordance with the provisions of the Takeover Regulations, 1997, within a period of 45 days from the date of this order;*

(b) *The Noticees shall, along with the consideration amount, pay interest at the rate of 10% per annum from September 10, 2009 to the date of payment of consideration, to the shareholders who were holding shares in the target company on the date of violation and whose shares are accepted in the open offer, after adjustment of dividend paid, if any.”*

3.4 The status of compliance of the said WTM Order was as below:

Date of Order	Due date of making public announcement	Date of public announcement	Delay in number of days
May 13, 2015	June 27, 2015	July 06, 2015	Delay of 8 days.

- 3.5 Therefore, as mentioned above, it was observed that the direction of making open offer was complied by the Noticees with a delay of 8 days. In view of the said violation, summary settlement proceedings were initiated against the Noticees. The notice of settlement was sent to the Noticees on February 01, 2022, and also, on alternate addresses and email IDs on February 22, 2022.
- 3.6 B.K. Narula (Noticee No: 5), vide email dated March 09, 2022, interalia, submitted that as they had received the WTM Order only on May 23, 2015 i.e. 9 days after the date of order, there was no delay by them in making the open offer as per the directions. B.K. Narula also confirmed, vide email dated March 11, 2022, that the above reply had been submitted on behalf of all the Noticees.
- 3.7 Based on above, it was alleged that the Noticees made delayed compliance with the directions of the WTM Order of making open offer, by 8 days, resulting in alleged violation of provisions of Regulation 11(2) of the SAST Regulations.
4. I note that the SCN was served on the Noticees on July 22, 2022, by way of electronic mail along with digital signature, which constitutes valid service as per Rule 7(1)(b) of the Adjudication Rules. Vide the said SCN, Noticees were asked to show cause as to why inquiry should not be initiated against the Noticees, and why penalty, if any, should not be imposed against the Noticees under the provisions of Section 15H(ii) of the SEBI Act. Vide reply dated August 02, 2022, Noticees sought additional time of 4 weeks for submitting reply to the SCN. Vide email dated August 26, 2022, Noticees were granted opportunity of personal hearing on September 08, 2022 and the Noticees were advised to submit reply, if any, before the date of personal hearing. Vide email dated September 03, 2022, Noticees submitted their reply to the SCN.
5. Personal hearing in the matter was granted to the Noticees on September 08, 2022. During the course of hearing, Authorized Representative (AR) of the Noticees viz. Shri Ravi Prakash, Advocate, reiterated the submissions made vide

reply dated September 03, 2022. Further, the AR sought additional time for making post hearing submissions. The request of the AR was acceded to and the AR was granted time till September 14, 2022 to make post hearing submissions. Vide email dated September 14, 2022, Noticees made the said post hearing submissions.

CONSIDERATION OF ISSUES AND FINDINGS

6. I have taken into consideration the facts and material available on record. The issues that arise for consideration in the present case are as follows:

6.1. Whether the Noticees violated provisions of Regulation 11(2) of the SAST Regulations?

6.2. If yes, whether the violations, if any, attract monetary penalty under Section 15H(ii) of the SEBI Act?

6.3. If so, what quantum of monetary penalty should be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

7. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticees and the same are reproduced below:

SAST Regulations

Consolidation of holdings

11.....

(2) No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through or with persons

acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

.....

Provided further that such acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him up to five per cent (5%) voting rights in the target company subject to the following: -

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buyback of shares by the target company;

(ii) the post-acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy-five per cent. (75%).

ISSUE No. I: Whether the Noticees violated provisions of Regulation 11(2) of the SAST Regulations?

8. I note that Noticees were mandated to make public announcement by June 27, 2015, i.e. 45 days from the date of WTM Order i.e. May 13, 2015. However, it was observed that the Noticees made the said announcement only on July 06, 2015, i.e. after a delay of 8 days.
9. I note that, vide emails dated September 03, 2022 and September 14, 2022, Noticees submitted their reply to the SCN. The relevant extract of the said reply is reproduced below:

9.1 The matter is Non-Est, as the Noticees complied with the Order by making a Public Announcement on July 6, 2015, i.e., on the 44th day from the service of said Order on

May 23, 2015. Admittedly, the Order gave 45 days to the Noticees for compliance, so there is no delay.

9.2 SCN has been issued under a confusion that 45-day window for ensuring compliance started from the date of Order. However, the Order itself expressly states that 45 days were to start from the service of the Order on the Noticees.

9.3 Following must be considered as regards the matter:

9.3.1 Firstly, Para 30 of the WTM Order mandated its service to the Noticees for compliance; which was done only on May 23, 2015. The said fact remains undisputed but not considered in favour of the Noticees.

9.3.2 Secondly, Noticees fulfilled the directions of the Order within the prescribed time from its service, without even using the extension of three weeks. This extension request of Noticees to SEBI remains undisputed; SEBI never objected to such an extension.

9.4 The allegation is the delay of eight days in complying with the Order of SEBI's WTM passed nearly eight years ago. Said Order directed the Noticees to make a Public Announcement within 45 days of service of the Order, as stated in Para 30. The Order was then serviced to the Noticees only on May 23, 2015, through speed post, and Noticees made the Public Announcement on the 44th day, i.e. July 6, 2015.

9.5 As said above, Para 30 of the Order made it abundantly clear that 45 days to comply were to start from the date when the Order was served on the Noticees and not from the date of passing the Order itself. Proof showing that the Order was served on Noticees on May 23, 2015, remains undisputed on the record. In a nutshell, that WTM specifically directed for serving the Order on Noticees for compliance (Refer Para 30 of the Order), and SEBI indeed served it on May 23, 2015 – which shows that service of the Order was significant for reckoning the timeline of compliance. So, the alleged

delay has been incorrectly perceived by reckoning the 45-day timeline from the date of the Order.

9.6 Para 5 of the SCN admittedly alleges a delay of 8 days by reckoning 45 days starting from May 13, 2015, i.e., 'date of Order' instead of 'the service of Order on the Noticees' – this service was done on May 23, 2015. In any event, established conventions and consistent decisions given by the Courts and Hon'ble SAT suggest that SEBI should calculate the time taken in complying with the Order from the date of its service and not from the date of passing the Order.

9.7 SCN improperly considers the Order and facts. Para 30 of the Order and Noticees' submissions ignored. Per Para 30, service of the Order was necessary for compliance – Noticees indeed complied within 45 days from the service of the Order.

9.8 SCN merely relies on Para 29 of the Order to allege delay – as demonstrated above; the SCN erroneously reckons time to comply from May 13, 2015 (i.e., the date on which WTM passed it). However, on May 13, 2015, the Order was not even dispatched by SEBI – much less served on the Noticees.

9.9 The SCN selectively relies only upon Para 29 to level up the allegations and has not even mentioned Para 30, which clearly shows that the Noticees complied with the Order within the specified time frame.

9.10 The SCN has disclosed the facts/documents that hold the Noticees guilty (i.e., Para 29) and not placed reliance on the Order's contents which exonerate the Noticees (i.e., Para 30). Hence, Para 29 and 30 of the WTM order be read together so that directions contained under Para 30 and judicial precedents on the point are not left otiose.

9.11 According to a conjoint reading of Para 30 with 29, the Public Announcement was to be made within 45 days from the service of said WTM Order; the Order was admittedly served on May 23, 2015 (through post bearing no. RM734654195IN) and

the Noticees made the Public Announcement on July 6, 2015, on the 44th day from said service. Thus, there is no delay.

9.12 Views expressed based on Para 30 of the WTM Order are also supported by the decision of the Hon'ble SAT in Prannoy Roy vs SEBI [Appeal (L) No. 345 of 2019], decided on June 18, 2019:

"The appellants thus have the first right to be supplied a copy of the impugned Order from SEBI. It is the onerous duty of SEBI to supply a copy of the Impugned Order to them so that the directions are made effective. In the instant case, we find that the whole world knows about the impugned Order except the appellants."

9.13 The Hon'ble SAT makes it clear above that to be made effective, a copy of an order must be provided to the Noticee in respect of whom it is passed and who must ensure compliance with it. According to the decisions of the Hon'ble SAT, even if the Order were uploaded on SEBI's website on May 13, 2015, or any other date before May 23, 2015, it cannot displace the requirement of serving a copy of said Order on the Noticees.

9.14 Noticees took the necessary steps to bring out Public Announcement following receipt of the WTM Order from SEBI – the steps they took showcase their intention to comply. But since making an open offer requires much preparation, several procedural steps, and aid from third parties thus, under abundant caution, Noticees also sought the time of three weeks from SEBI on June 24, 2015.

9.15 SEBI neither denied nor objected to Noticees' Extension for three weeks. Even so, the Noticee did not wait for SEBI's reply and moved apace with making the Public Announcement. Noticees made the Public Announcement offer on July 6, 2015, within 45 days – without even getting complacent with their request for an extension of time. They concluded the open offer under the law and paid consideration to the shareholders along with interest calculated till the date of paying the shareholders. SEBI is aware of all this and gave its observation letter regarding the said open offer

knowing these facts well. Questioning these would point to an error in SEBI's wisdom and unfairness towards the Noticees.

9.16 Without prejudice to the above, it is essential to note that there has been no investor/shareholder complaint against the Company, which shows that there had been no investor/shareholder loss.

10. I note from the submissions of Noticees that Noticees have claimed that they are in compliance with the directions issued, vide the WTM Order dated May 13, 2015, while making the public announcement on July 06, 2015. Noticees have considered the time limit of 45 days, as stipulated by WTM Order for making the public announcement, from date of service of the Order i.e. May 23, 2015, and not from the date of the order i.e. May 13, 2015. In this regard, Noticees have relied upon the decision of the Hon'ble SAT in Prannoy Roy vs SEBI [Appeal (L) No. 345 of 2019], decided on June 18, 2019, and contended that it is the duty of SEBI to provide a copy of the Order to make the directions effective.
11. I note from para 29 and 30 of the WTM Order dated May 13, 2015 that the direction to the Noticees was to make public announcement to acquire shares of the target company in accordance with the provisions of the Takeover Regulations, 1997, within a period of 45 days from the date of the order and not from the date of service of order.
12. I note from the above that Noticees were mandated to honor obligation as cast upon them within the timeline as counted from the date of the order i.e. May 13, 2015. Therefore, it is unambiguous that the public announcement should have been made by the Noticees within 45 days of the WTM Order, i.e. on or before June 27, 2015.
13. However, considering that the order was served after 9 days of the date of the WTM order; that the Noticees sought extension of 3 weeks for complying with the said WTM Order, vide letter dated June 24, 2015 i.e. within the 45 days'

period, in which they also cited delay in receipt of the order as one of the factors for seeking extension; that there was no response from SEBI on the said letter dated June 24 ,2015 and also that Noticees have not tried to evade from their obligation, instead, as and when they came to know about the WTM directions, Noticees worked to meet the timeline and finally, made the public announcement, I am inclined to take a lenient view in the matter.

14. I also note that the non-compliance took place in 2015, i.e. more than 8 years ago. I also note that there is no evidence on record which suggests that the said WTM order was delivered to the Noticees on or prior to May 23, 2015 by any other mode, like email etc.
15. Considering the facts available on records, allegations against the Noticees and the response of the Noticees, I feel that the allegations made in the SCN dated July 21, 2022 do not warrant imposition of monetary penalty. Accordingly, SCN dated July 21, 2022 issued against the Noticees is disposed of.

Place: Mumbai

Date: December 16, 2022

AMIT KAPOOR

ADJUDICATING OFFICER