BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2022-23/18029]

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.

FACTS OF THE CASE IN BRIEF

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'**) 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.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated April 30, 2021, 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.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

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.

5. The allegations levelled against Noticee in the SCN are as under:

   a. *It was observed by SEBI during examination that, on July 02, 2015, Noticee, who was a promoter entity of Metkore, received 1,62,60,304 shares of Metkore from Cronimet Mercon Invest Limited, another promoter entity through market. Disclosure regarding the same dated July 04, 2015, was also made by Metkore to BSE and the same was made available on BSE website.*

   b. *It was further observed that pursuant to the said transaction, the shareholding of Noticee in Metkore increased from 4.26% to 27.35%. In this regard, BSE, vide email dated December 20, 2017 stated that Noticee was not a promoter of Metkore for 3 years prior to the aforesaid transaction. Although the transfer of shares happened between promoters* *of Metkore, it was noted that the Noticee was not eligible for exemption under Regulation 10 of SAST Regulations for the said acquisition from the requirement of making Open Offer under Regulation 3(3) of SAST Regulations as he was not a promoter of Metkore for 3 years prior to the aforesaid share transfer. It was therefore noted that to become eligible for the said exemption, Noticee was required to be disclosed as promoter for at least from the quarter ending September 2012. However, the Noticee had been disclosed as promoter only from the quarter ending December 2012.*

c. *Hence, it was observed that Noticee was required to make Open Offer under Regulation 3(1) of SAST Regulations. However, it was observed that there was no open offer made by Noticee for aforesaid acquisition of shares of Metkore. In this regard, SEBI, vide email dated December 11, 2020 had sought clarification from Noticee. However, no reply/communication was received by SEBI. It was also observed that vide Adjudication Order dated February 08, 2018, penalty of Rs. 4,00,000/- was imposed on Noticee for violation of Regulation 29(1) read with Regulation 29 (3) of SAST Regulations with respect to the same transaction.*

d. *In the light of above findings, it is alleged that Noticee has violated provisions of Regulation 3(3) of SAST Regulations.*

6. The SCN was sent to Noticee through Speed Post Acknowledgement due (hereinafter referred to as '**SPAD**') on August 31, 2021 as well as through digitally signed email dated September 01, 2021. The SCN sent through digitally signed email as well as SPAD failed to get delivered to Noticee. The SCN was also sent to alternate email address of Noticee. In this regard, delivery of SCN through affixture was also attempted and the same too failed. Therefore, SCN was duly served on Noticee through newspaper publication in the *Deccan Chronicle (English Language), Daily Hindi Milap (Hindi)* and *Sakshi (Telugu)* in Hydrebad edition on April 12, 2022. Vide, the aforementioned publication, an opportunity of personal hearing before undersigned was also granted to Noticee on April 25, 2022.

7. I note that despite the service of SCN and HN in the matter, Noticee had not filed any reply to the SCN nor attended the scheduled hearing. I also note that sufficient opportunity has been granted to Noticee to represent himself in the matter. However, Noticee has failed to make any submissions in the instant proceedings. In view of the above, I am compelled to proceed ex parte in the matter against Noticee. In this regard, it is worth mentioning here that it is well settled position of law that if the facts/details of charges are not disputed by the person to whom show cause notice is issued, then, it is presumed that the same are admitted by him. The Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. v/s SEBI [2007] 76 SCL 51 (SAT - MUM), inter-alia, held that :
"......the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. 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:

I. Whether Noticee has violated Regulation 3(3) of SAST Regulations?

II. Does the violation, if any, attract monetary penalty under Section 15H(ii) of the SEBI Act?

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

9. Before moving forward, it is pertinent to refer to the relevant provision of the SAST Regulations which was in force at the time of impugned transactions, which are reproduced as under:

Relevant provisions of SAST Regulations:

Regulation 3(3) of SAST Regulations: *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.*

<u>Issue No. I- Whether Noticee has violated Regulation 3(3) of SAST Regulations?</u>

10. I note from the email dated December 20, 2017, received by SEBI from BSE, that Noticee was the promoter of Metkore during the period March 31, 2013 to December 31, 2015. I observe from the disclosure dated July 04, 2015 made by Metkore to Exchanges and from available records that on July 02, 2015 that Noticee had received 1,62,60,304 shares of Metkore from Cronimet Mercon Invest Limited, another promoter of Metkore.

11. I note from the shareholding pattern of Metkore filed with Exchanges that for quarter ending June 2015, 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. From the shareholding pattern of Metkore for the quarter ending on September 2015 available on the website of BSE,I observe that by virtue of his acquisition of shares from Cronimet Mercon Invest Limited, the total shareholding of Noticee in Metkore increased to 1,92,60,304 i.e. 27.35% of the total shareholding of the Company. Thus, I find that 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.

12. I note that 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.*" I also note that 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.

13. As already established, 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 had resulted in breach of threshold limit of 25% prescribed under Regulation 3(1) of SAST Regulations. Thus, I note that in terms of combined reading of Regulation 3(3) and 3(1) of SAST Regulations, Noticee was under an obligation to make an open offer for acquiring shares of the Metkore on crossing threshold of 25% shareholding in Metkore. However, I note Noticee was a promoter of Metkore at the relevant time and he had acquired shares from another promoter of Metkore, Cronimet Mercon Invest Limited. Thus, the aforementioned transaction was an inter se transfer of shares between promoters. In this context, it is pertinent to examine whether aforementioned transfer of shares falls within exemption from obligation to make an open offer.

14. I note that Regulation 10 of SAST Regulations provide for exemption from the obligation to make an open offer under Regulation 3 and Regulation 4 of SAST Regulations, on satisfying certain conditions prescribed in the said Regulation. One of the conditions provided in Regulation 10 of SAST Regulations for granting exemption from making open offer under Regulation 3 and Regulation 4 of SAST Regulation is acquisition pursuant to inter se transfer of shares by persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or SAST Regulations for not less than three years prior to the proposed acquisition. I note that in terms of Regulation 10 of SAST Regulations,

in order to become eligible for the exemption from making the open offer, Noticee was required to be disclosed as promoter for at least from previous three years i.e. from the quarter ending September 2012. However, I note from the email of BSE dated December 20, 2017 to SEBI that Noticee was disclosed as a promoter of Metkore only from March 31, 2013.Thus, I find that Noticee would not be eligible for exemption from making open offer under aforementioned ground provided in Regulation 10 as he was not a promoter of Metkore for 3 years prior to the aforesaid transaction. I also note that there is no material available on record to indicate that Noticee falls within any of the conditions specified under Regulation 10 of SAST Regulation to be eligible for exemption from making open offer under Regulation 3 of SAST Regulations. Therefore, I note that Noticee was under an obligation to make open offer in respect of impugned transactions 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. In this regard, I also note that SEBI, vide email dated December 11, 2020 had sought clarification from Noticee. However, no reply/communication was received from Noticee in this regard.

15. In light of the above observations, I find that Noticee had 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?

16. 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..….".*

17. 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:

<u>SEBI Act</u>

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.

<u>Issue No.III - What should be the quantum of monetary penalty</u>?

18. 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:-

<u>SEBI Act</u>

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.*

19. 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

20. 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.

21. 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.

22. 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)	

23. 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.

24. 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: July 27, 2022 **ADJUDICATING OFFICER**