

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AN/PR/2023-24/29950]

UNDER SECTION 15-I OF 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:

India Steel Works Limited

PAN: AAACI1362A

In the matter of India Steel Works Limited

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter also referred to as 'SEBI') had initiated Adjudication Proceedings in respect of India Steel Works Ltd. (hereinafter also referred to as 'Noticee' / 'Company') for the alleged violations of Regulation 17 (1C) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter also referred to as 'SEBI (LODR) Regulations, 2015' / 'SEBI LODR Regulations' / 'LODR Regulations') in the matter of India Steel Works Limited.

B. APPOINTMENT OF ADJUDICATING OFFICER

2. Whereas, the Competent Authority was prima facie of the view that there were grounds to adjudicate upon the alleged violations by the Noticee, as stated above and therefore, in exercise of the powers conferred under Section 19 of the SEBI Act, 1992 read with Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred as "*Adjudication Rules*"), the Competent Authority appointed the undersigned as Adjudicating Officer ("AO") to inquire into and adjudicate under Section 15HB of the SEBI Act, 1992 (hereinafter also referred to as 'SEBI Act') the

aforesaid alleged violations by the Noticee. The said proceedings of appointment were communicated to the undersigned vide Communique dated September 28, 2023.

C. SHOW CAUSE NOTICE, REPLY and HEARING

3. A Show Cause Notice bearing No. SEBI/HO/EAD/EAD5/P/OW/2023/0000041963/1-2 dated October 11, 2023 (hereinafter also referred to as "SCN") was served upon the Noticee in terms of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 to show cause as to why inquiry should not be held and penalty should not be imposed under Section 15HB of the SEBI Act, for the aforesaid alleged violations.
4. The allegations in respect of the Noticee inter alia brought out in the SCN are as under:

" ...

3.BACKGROUND

In this regard, following was inter alia observed by SEBI:

3.1.Scope of Examination and Examination period: July 2022 – October 2022

The scope of examination was to ascertain Non-compliance under Regulation 17(1C) of SEBI (LODR) Regulations, 2015 with respect to obtaining approval of shareholders for appointing a person on the Board of Directors within the time provided therein.

4.Observations of SEBI pursuant to Examination and alleged violations:

4.1.Approval of shareholders not obtained for appointment of new director by Noticee:

In this regard, following was inter alia observed and/or alleged by SEBI:

4.1.1. While reviewing the corporate announcements made by the company, during the offsite monitoring of compliances under SEBI (LODR) Regulations, 2015 by stock exchange, it was observed that company in the meeting of Board of directors held on July 15, 2022 had appointed Mrs. Priyanka V. Gupta as an Additional (Non-Executive Director, Non-Independent Woman Director) with effect from July 15, 2022. Copy of intimation of appointment filed with stock exchange is placed as Annexure 2.

4.1.2. Under Regulation 17(1C), the listed entity has to ensure that approval of shareholders for appointment of a person on the Board of Directors is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.

4.1.3. In the instant matter, three months from the date of appointment got completed on October 14, 2022.

4.1.4. On checking the stock exchange website, it was observed that the last shareholders meeting was held on February 14, 2022 and no meeting of shareholders was held till October 14, 2022 for considering approval of appointment of Mrs. Priyanka V. Gupta. Copy of details of shareholders meeting available on stock exchange website is placed as Annexure 3.

4.1.5. Vide Email dated November 28, 2022, comments were sought from stock exchange with respect to the above observation and whether any action was taken by stock exchange in this regard.

4.1.6. BSE vide email dated December 05, 2022 provided the following reply with respect to the above observation:

The Company has not obtained the approval from shareholders till 15th October, 2022 and however, due to personal reasons Mrs. Priyanka V. Gupta has resigned w.e.f. 14th November, 2022.

...

4.1.7. While Mrs. Priyanka V. Gupta has resigned, the company has not been in compliance with Regulation 17(1C) of SEBI(LODR) Regulations, 2015, with respect to obtaining approval of shareholders for appointment of Mrs. Priyanka V. Gupta as an Additional Director within 3 months i.e. by October 14, 2022.

4.1.8. In view thereof, it is alleged that Noticee had violated provisions of Regulation 17 (1C) of SEBI (LODR) Regulations, 2015.

" ..."

5. Vide email and letter dated October 23, 2023, Noticee submitted its reply to the SCN. Thereafter, vide Hearing Notice dated October 25, 2023, Noticee was provided with an opportunity of personal hearing on November 01, 2023. In this regard, vide email dated October 27, 2023, the Authorized Representative ("AR" / "ARs") of the Noticee (Authorisation letter dated October 27, 2023) viz., Adv. Priya Rai i/b Ragini Singh and Associates requested further time to file additional submissions and to reschedule the personal hearing. In view of the request made by the Noticee, time till November 13, 2023 was allowed for filing additional submission and vide email dated December 06, 2023, the opportunity of hearing was rescheduled to December 12, 2023. Vide email and letter dated November 13, 2023, Noticee through its ARs viz., Priya Rai i/b Ragini Singh and Associates submitted its additional reply to the SCN. The Noticee availed the said hearing opportunity via videoconferencing through its ARs viz., Adv. Karan Ratti Kapoor and Adv. Priya Rai i/b Ragini Singh and Associates wherein the ARs inter alia relied upon and reiterated the submissions made vide letter dated October 23, 2023 and November 13, 2023. The ARs sought time till December 18, 2023 to make further additional submissions as their final and complete submissions in the matter, accordingly the same was allowed. Noticee through its ARs made additional submissions vide email and letter dated December 18, 2023.
6. The key submissions made by Noticee vide letter dated October 23, 2023; November 13, 2023 and December 18, 2023 as reply/additional submissions to the SCN, are as under:

Submissions dated October 23, 2023:

"...

2. With respect to the allegations levelled in the show cause notice dated October 11, 2023 ("SCN") regarding shareholder approval not being taken for the appointment of Mrs. Priyanka Gupta as additional director, without prejudice, it is submitted that she was appointed as an Additional Director on 15th July, 2022 vide a Board Resolution of even date. Further, from the SCN itself it is borne out that she resigned as additional director on 14th November, 2022 and was therefore holding the position as a director for a short period of 4 (four) months approximately. Pursuant to provisions of Regulation 17(1)(c), the Noticee was to seek shareholder approval within 3 months from the appointment of Mrs Gupta which it was inadvertently unable to do. However, in the present case it is the admitted position that Mrs Gupta resigned on 14th November, 2022 and occupied the said position of director only for a period of 4 (months). It is respectfully submitted that any non-compliance with SEBI (LODR) Regulations as alleged in the SCN was unintentional and without any ulterior motive and the Noticee never consciously or deliberately / willfully avoided compliance with the obligations under SEBI (LODR) Regulations. It is further respectfully submitted that at best, the violation, if any, is of a technical nature and should not be visited with penalty.
3. It is submitted that in a catena of judgments, the Hon'ble Supreme Court and the Hon'ble Securities Appellate Tribunal have observed that penalty need not be imposed in every situation where it is lawful to impose penalty. Moreover, for failure to perform a statutory obligation several factors must be considered such as dishonest or willful conduct, which

is not the case in the present matter. Further, when there is a mere technical or venial violation, the Authority competent to impose penalty may not impose any penalty in the given facts of a matter.

4. Moreover, the Hon'ble Supreme Court in the matter of Hindustan Steel Ltd., v. State of Orissa, [AIR 1970 SC 253] held that "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstance. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."
5. It is submitted that this Ld. Authority indeed has the discretion to waive penalty in cases such as the present one. Respectfully, it is settled law that statutory authorities must exercise discretion in a reasonable manner which allows corporates some breathing space. It is submitted that the alleged violation did not harm the interests of the investors in any manner.
6. Further, it is submitted that no gain or advantage accrued to the Noticee herein by such violation, if any. In view of the above, it is most humbly prayed that the penalty in respect of the purported non-compliance with the provisions of SEBI (LODR) Regulations, 2015 may be waived in the present matter and a quietus may please be granted to the issue at hand.

...

Submissions dated November 13, 2023:

...

3. The SCN in the present matter has been issued by this Ld. Authority to the Noticee under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing penalty) Rules, 1995 for alleged violation of Regulation 17(1C) of SEBI (LODR) Regulations, 2015. It has been alleged that the Noticee failed to obtain approval of the Shareholders for appointing Mrs. Priyanka Gupta as an Additional Non-Executive Director within the time provided in the regulations.
4. It is respectfully submitted that Mrs. Priyanka Gupta was appointed as an Additional Non-Executive Director vide Board Resolution dated July 15, 2022 and held the position as a non-executive director for a duration of 4 months, i.e till November 14, 2022. However, the Noticee inadvertently, unintentionally and without any ulterior motive could not obtain approval of the shareholders within 3 months from the appointment.
5. Further, in the case of Chintalapati Srinivasa Raju v. Securities and Exchange Board of India, (AIR 2018 SC 2411) the Hon'ble Supreme Court Justice R. Nariman held that:
"Non-executive directors are, therefore, persons who are not involved in the day-to-day affairs of the running of the company and are not in charge and are not responsible for the conduct of the business of the company."
6. In the present case, Mrs. Priyanka Gupta, who served as a non-executive director, during her tenure, never signed any Board Resolution and was not remunerated in any form by the Noticee as evidenced from the bank statements of the Noticee. It is pertinent to note that as a non-executive director she did not have any involvement in decision making or in the operational affairs of the Noticee. In essence, her role in the Noticee was nominal and without any significant impact on the operations of the Noticee during her brief association.
7. It is submitted that failure to obtain approval from the shareholders was a mere venial violation without any mala fide intent on the part of the Noticee. Further, it is humbly submitted that non-compliance with regulation 17 (1C) was an unintentional and genuine oversight on the part of the Noticee and did not cause any prejudice to the interest of the shareholders of the Noticee Company. Further, if at all, the same was a technical violation of the regulation in question which caused no harm to any investor or the market in general over the short period of 4 months.
8. In view of the facts, circumstances and submissions made hereinabove, it is most respectfully submitted that penalty in respect of non-compliance with the provisions of SEBI (LODR) Regulations, 2015 may be waived given the facts and circumstances of the present matter.

...

Submissions dated December 18, 2023:

...

3. It is respectfully submitted that the Noticee inadvertently, unintentionally without any ulterior motive failed to obtain approval from the shareholders for the appointment of Mrs. Priyanka Gupta, within 3 months of such appointment, as a Non-Executive Director of Noticee.
4. It is humbly submitted that Mrs Priyanka Gupta was appointed as an Additional Non- executive non-independent Director by the Board at its meeting held on July, 15, 2022. The Board meetings attended by Mrs Gupta were held on July 20, 2022; July 29, 2022; August 13, 2022 and September 20, 2022. It is essential to note that Mrs Gupta did not attend any Board Meeting after October 14, 2022, including the Board meeting which was held on November 14, 2022, the date on which she resigned from the position of a non-executive director of the Noticee. During her tenure, Mrs Gupta did not execute any documents for and on behalf of the Company nor was she entrusted with any decision-making authority. It bears mentioning that this technical oversight of inadvertently not obtaining shareholders' approval for Mrs Gupta's appointment as well as her participation in the aforementioned board meetings did not cause any gain or advantage to the noticee, nor was there any loss suffered by any investor or shareholder of the Company. It is pertinent to note that no complaints were ever received from the shareholders in this regard.

5. It is submitted that in the matter of *Yogi Sungwon (India) Ltd. Vs. SEBI* vide judgment dated May 4, 2001, the Hon'ble Securities Appellate Tribunal held that the Ld. Adjudicating Officer in a matter does not necessarily have to impose a penalty even if it is established that there has been a violation, and must consider all relevant factors in the matter. The relevant portion of the SAT order is reproduced below:

"On a perusal of section 15I it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "he may impose such penalty" is of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. The Adjudicating Officer shall have due regard to the factors" stated in the section is a direction and not an option. It is not incumbent on the part of the Adjudicating Officer, even if it is established that the person has failed to comply with the provisions of any of the sections specified in sub section (1) of section 15I, to impose penalty. It is left to the discretion of the Adjudicating Officer, depending on the facts and circumstances of each case."

6. The relevant portion of the judgment of the *Hindustan Steel limited vs. State of Orissa*, judgment dated August 4, 1969 is reproduced wherein the Hon'ble Apex Court provided clear-cut guidelines in this regard.

"An Order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute".

7. It is most respectfully submitted that in light of the abovementioned judgments and considering the facts in the present matter, penalty in respect of a venial violation ought not to be imposed.

8. It is respectfully submitted that in terms of section 15I, whether penalty should be imposed for failure to perform the statutory obligation is a matter of discretion left to the Ld. Adjudicating Officer. It is submitted that in the present matter, as elucidated hereinabove, the facts demonstrate that there was no ill-will harboured by the Noticee towards investors which led to the violation in question, nor was market integrity affected in any manner. As such, it is humbly requested that the Ld. Adjudicating Officer exercise discretion in favour of the Noticee herein and waive the penalty.

9. Further, it is most respectfully submitted that in the present matter, for imposing penalty, Section 15HB has to read along with Section 15J in a harmonious manner to avoid any inconsistency or repugnancy. The discretion is vested in the Ld. Adjudicating officer under section 15J on the quantum of penalty to be imposed. Section 15J stipulates that while adjudicating the quantum of penalty 15I, the officer shall have due regard to -the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; the amount of loss caused to an investor or group of investors as a result of the default and the repetitive nature of the default.

10. It is pertinent to note that in the present case, the Noticee neither made disproportionate gain or unfair advantage nor caused any loss to the investors by failing to obtain approval from the shareholders. Further, it is submitted that the default is not of repetitive nature. In light of the above-stated facts, it is most humbly prayed that the penalty in respect of a venial violation of failure to obtain approval by shareholders as per the provisions of SEBI (LODR) Regulations, 2015 may be waived off.

...

D. CONSIDERATION OF ISSUES AND FINDINGS

7. The issues that arise for consideration in the instant matter are:

Issue No. I: Whether the Noticee had violated the provisions of Regulation 17 (1C) of SEBI (LODR) Regulations, 2015, as alleged in the SCN?

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Sections 15HB of the SEBI Act, 1992?

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

8. Before going into the merits of the case, I note that the Noticee had raised preliminary contention in its submissions which are dealt hereunder:
9. The Noticee had contended in its reply dated October 23, 2023 that “...in a catena of judgments, the Hon’ble Supreme Court and the Hon’ble Securities Appellate Tribunal have observed that penalty need not be imposed in every situation where it is lawful to impose penalty...when there is a mere technical or venial violation, the Authority competent to impose penalty may not impose any penalty in the given facts of a matter...Ld. Authority indeed has the discretion to waive penalty in cases such as the present one. Respectfully, it is settled law that statutory authorities must exercise discretion in a reasonable manner which allows corporates some breathing space...” and in this regard cited Hon’ble Supreme Court judgement in the matter of Hindustan Steel Ltd., v. State of Orissa, [AIR 1970 SC 253] and Hon’ble Securities Appellate Tribunal order dated May 04, 2001 in the matter of Yogi Sungwon (India) Ltd. vs SEBI.
10. In this regard, I note that Securities Laws (Amendment) Act, 2014 prescribes a minimum penalty inter alia under Section 15HB of SEBI Act. The said amendment has come into effect from the September 08, 2014.
11. Further, it may also be noted that facts and circumstances of each case may be unique in nature and are accordingly dealt with and decided. I note from the text as submitted by the Noticee of the relied upon judgement in Hindustan Steel Ltd. vs State of Orissa, that the said judgement pertained to quasi criminal proceedings, however, the instant matter is regarding violation of securities laws viz., SEBI (LODR) Regulations, 2015. In this regard, reliance is placed on Hon’ble Supreme Court (‘SC’) judgement in The Chairman, SEBI vs Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was inter alia held by Hon’ble SC that:

“

...

Therefore, the proceedings under Chapter VI A are neither criminal nor quasi criminal. The penalty leviable under this chapter or under these Sections, is penalty in cases of default or failure of statutory obligation or in other words breach of civil obligation

....

”

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12. As regards the reliance placed by Noticee on Hon'ble Securities Appellate Tribunal in the matter of Yogi Sungwon (India) Ltd. vs SEBI as cited by the Noticee, I note that pursuant to the said order of Hon'ble SAT, inter alia the aspect regarding imposition of penalty in Adjudication Proceedings was further dealt by Hon'ble Supreme Court in the above cited order viz., Chairman, SEBI vs Shri Ram Mutual Fund [2006] 68 SCL 216(SC), wherein it was inter alia held by Hon'ble SC that:

“ ...
the breach of civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not...Hence, we are of the once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary
...
”

13. Here it would also be relevant to draw reference to Order of the Hon'ble SC in the matter of SEBI vs Sandip Ray & Ors. {C.A. Diary No (s) 791/ 2023} wherein it was inter alia held:

“
...
Learned counsel for appellant further submits that even review application filed to make a correction in the order and to justify that the order reducing the penalty below Rs. 1,00,000/- is not permissible under Section 15HB of the SEBI Act, 1992.

After we have heard learned counsel for the appellant, it clearly manifests that the Tribunal has not taken into consideration the effect and mandate of Section 15HB of the SEBI Act, 1992.

Taking into consideration the facts and circumstances of this case, there appears no justification in calling upon the respondent and we modify the order impugned dated 29.07.2022 and the penalty of Rs.75,000/- as inflicted upon noticee no. 5 (Mr. Sandip Ray) and noticee no.6 (Mr. Rajkumar Sharma), as referred to in para no. 13 of the order impugned, is modified and substituted to Rs.1,00,000/- in terms of Section 15HB of SEBI Act, 1992 and with this modification the present appeals stand disposed of.

.....
”

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In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence cannot be accepted.

14. I now proceed to deal with the matter on merits as regards alleged violation in respect of the Noticee, as per the SCN.

Issue No. I: Whether the Noticee had violated the provisions of Regulation 17 (1C) of SEBI (LODR) Regulations, 2015, as alleged in the SCN?

15. It was inter alia alleged in the SCN that the Noticee had not obtained approval of shareholders for appointment of new director (hereinafter also referred as 'additional director' / 'non-executive director') and thereby had violated provisions of Regulation 17 (1C) of SEBI (LODR) Regulations, 2015. In this regard, as noted from material available on record, following was inter alia observed by SEBI:
 - 15.1. Noticee, in the meeting of Board of directors held on July 15, 2022, had appointed Mrs. Priyanka V. Gupta as an Additional Director (Non-Executive Director, Non-Independent Woman Director) with effect from July 15, 2022.
 - 15.2. Under Regulation 17(1C), the listed entity had to ensure that approval of shareholders for appointment of a person on the Board of Directors is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.
 - 15.3. In the instant matter, three months from the date of appointment got completed on October 14, 2022. On checking the stock exchange ('BSE') website, SEBI observed that the last shareholders meeting was held on February 14, 2022 and no meeting of shareholders was held till October 14, 2022 for considering approval of appointment of Mrs. Priyanka V. Gupta.

- 15.4. Vide Email dated November 28, 2022, SEBI sought comments from stock exchange with respect to the above observation and whether any action was taken by stock exchange in this regard. BSE vide email dated December 05, 2022 inter alia replied, ‘ ... *The Company has not obtained the approval from shareholders till 15th October, 2022 and however, due to personal reasons Mrs. Priyanka V. Gupta has resigned w.e.f. 14th November, 2022...*’.
- 15.5. SEBI observed that while Mrs. Priyanka V. Gupta had resigned, the Noticee had not been in compliance with Regulation 17(1C) of SEBI(LODR) Regulations, 2015, with respect to obtaining approval of shareholders for appointment of Mrs. Priyanka V. Gupta as an Additional Director within 3 months i.e. by October 14, 2022.
16. In this regard, I note that Noticee has neither disputed nor denied the alleged violation and instead the submissions of the Noticee vide letters dated October 23, 2023, November 13, 2023 and December 18, 2023 (broadly speaking save for differently worded, the submissions were similar in nature), as reply to the SCN, are in nature of admission in so far as Noticee had inter alia submitted that “... Pursuant to provisions of Regulation 17(1)(c), the Noticee was to seek shareholder approval within 3 months from the appointment of Mrs Gupta which it was inadvertently unable to do....any non-compliance with SEBI (LODR) Regulations as alleged in the SCN was unintentional and without any ulterior motive...” and that “...Mrs. Priyanka Gupta was appointed as an Additional Non-Executive Director vide Board Resolution dated July 15, 2022 and held the position as a non-executive director for a duration of 4 months, i.e till November 14, 2022. However, the Noticee inadvertently, unintentionally and without any ulterior motive could not obtain approval of the shareholders within 3 months from the appointment....”.
17. In this regard, Noticee had inter alia submitted that Mrs. Priyanka Gupta resigned on November 14, 2022 and occupied the said position of director only for a period of four months and further cited Hon’ble SC judgement in Chintalapati Srinivasa Raju v. Securities and Exchange Board of India, (AIR 2018 SC 2411) regarding

responsibility of Non-executive directors and submitted that “...Mrs. Priyanka Gupta, who served as a non-executive director, during her tenure, never signed any Board Resolution and was not remunerated in any form by the Noticee as evidenced from the bank statements of the Noticee. It is pertinent to note that as a non-executive director she did not have any involvement in decision making or in the operational affairs of the Noticee. In essence, her role in the Noticee was nominal and without any significant impact on the operations of the Noticee during her brief association...”

As regards the contention of Noticee regarding the role of non-executive director and the judgment cited in this regard, it may be noted that facts and circumstances of each case are unique in nature and are accordingly dealt with and decided. In the instant matter, the allegation is about Noticee having violated Regulation 17 (1C) of the SEBI (LODR) Regulations, 2015. It would be relevant to refer to the text of Regulation 17(1C) of SEBI (LODR) Regulations, 2015 which reads as under:

SEBI (LODR) Regulations, 2015

“ ...

Board of Directors.

17...

(1C). The listed entity shall ensure that approval of shareholders for appointment 89[or re-appointment] of a person on the Board of Directors90[or as a manager]is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier:

...”

From the above text, I note that the Noticee, being listed entity had to inter alia ensure that approval of shareholders for appointment of person on the Board of Directors is taken at the next general meeting or within a time period of three months from the date of appointment, whichever was earlier.

I note that the Noticee had also inter alia contented that the failure to obtain shareholder approval in the instant matter was regarding appointment of a non-executive director and that her role in the company was nominal and without any significant impact on the operations of the company during her brief association of four months. However, I note that the Regulation 17(1C) of SEBI (LODR) Regulations, 2015 does not provide any exemption as such from compliance based on the type of director appointed and the tenure of director, in the instant matter being non-executive director for four months.

Further, in this regard, although the Noticee had contended that her role as a director was nominal, however, I note that Noticee had inter alia also submitted that Mrs. Priyanka Gupta had attended Board meetings held by Noticee on July 20, 2022; July 29, 2022; August 13, 2022 and September 20, 2022.

Further, in this regard, I also note from the disclosures made by Noticee inter alia informing about the Board Meeting to be held on July 20, 2022 and July 29, 2022, as available on the BSE website, that the same were scheduled inter alia for consideration of Audited Financial Results (Standalone and Consolidated) of the Noticee for the quarter and year ended March 31, 2022 along with the Report issued by the Statutory Auditors of the Noticee. It is further noted that the Board Meeting to be held on August 13, 2022 was scheduled inter alia to consider, approve and take on record the Un-Audited Financial Results (Standalone & Consolidated) of the Noticee for the quarter ended June 30, 2022 along with the Limited Review Report issued by the Statutory Auditors of the Noticee and the Board Meeting to be held on September 20, 2022 was scheduled inter alia to consider, approve appointment of Independent Directors on the Board of the Noticee. In my opinion, generally speaking meetings of board of directors of body corporates are held to discuss and decide inter alia important agenda items. In the instant case too, Noticee has inter alia submitted that said additional director had attended four board meetings during her tenure, as already brought out in the foregoing.

In any case, I note that Noticee being listed entity, was obligated to ensure that approval of shareholders for appointment of Mrs. Priyanka Gupta as a Board of Director was taken at the next general meeting or within a time

period of three months from the date of appointment, whichever was earlier. Therefore, the contentions of the Noticee in this regard, are devoid of merit and hence cannot be accepted.

18. In view thereof, I find that the allegation that the Noticee had not obtained approval of shareholders for appointment of new director, stands established. Therefore, I hold that Noticee had violated Regulation 17 (1C) of SEBI (LODR) Regulations, 2015.

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Sections 15HB of the SEBI Act, 1992?

19. It has been established in the foregoing paragraphs that Noticee had violated provisions of Regulation 17(1C) of SEBI (LODR) Regulations, 2015.
20. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter alia 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...."

21. Therefore, for the established violation, as brought out in the foregoing paragraphs, I find that Noticee is liable for monetary penalty under section 15HB of the SEBI Act, 1992 which reads as under:

" ...

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

..."

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

22. While determining the quantum of penalty under Section 15HB 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, 1992

“ ...

Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15- 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.

....”

23. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticee as a result of the violations committed by the Noticee. Further, there is nothing on record to show that the violations committed by the Noticee are repetitive in nature. In this regard, I also note that Noticee had inter alia contended that in the present case, the Noticee neither made disproportionate gain or unfair advantage nor caused any loss to the investors and that the default was not repetitive in nature. However, I cannot ignore that requirement of Regulation 17(1C) of SEBI (LODR) Regulations, 2015, as in the instant matter was obligatory on the Noticee and which the Noticee failed to comply with, as dealt with and established in the foregoing and that SEBI is duty-bound to inter alia enforce compliance of these regulations. In view thereof, I am of the view that such violation on part of the Noticee needs to be dealt with imposition of suitable penalty.

E. ORDER

24. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose following penalty, as per Table below, on the Noticee, for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case:

Name of the Noticee	Penalty Under Section	Penalty Amount (Rs.)
India Steel Works Limited	15HB of SEBI Act, 1992	Rs. 1,00,000/- (Rupees One Lakh Only)

25. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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

26. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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.
27. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: December 29, 2023
Place: Mumbai

Amar Navlani
Adjudicating Officer