BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/SM/2020-21/8025/30]

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

In respect of

Monnet Ispat & Energy Limited

(Address: Art Guild House, A-Wing 2nd Floor,
Unit No-13, Phoenix Mall Compound, LBS Marg,
Kurla West, Mumbai – 400 070)

BACKGROUND

1. A department (in short **OD**) of Securities and Exchange Board of India (in short **SEBI**) examined the status of compliance with the provisions of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (in short **LODR Regulations, 2015**) by Monnet Ispat & Energy Limited (in short **Noticee/Monnet**) whose equity and debt securities are listed on Bombay Stock Exchange (BSE). During the examination, OD observed that the Noticee did not make requisite disclosures under the provisions of regulations 52(4), 52(5) and 54(2) under Chapter V of LODR Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

2. As regards alleged non-compliances by the Noticee, OD initiated Adjudication Proceeding against the Noticee. The Competent Authority prima facie being of the view that there are grounds to adjudicate upon the alleged violations, appointed Shri V. S. Sundaresan as Adjudicating Officer (in short AO), under section 15-I of The Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) r/w rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under section of 15A(b) of the SEBI Act, 1992, the alleged violations of provisions of regulations 52(4), 52(5) and 54(2) of LODR Regulations, 2015. The matter was transferred and undersigned was appointed AO, which was conveyed vide communique dated December 26, 2019.

<u>SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING</u>

3. A show cause notice dated October 18, 2019 (hereinafter referred to as **SCN**) was issued to the Noticee under rule 4 of the Adjudication Rules, 1995 advising Noticee to show cause as to why an inquiry should not be held against it and why penalty under section 15A(b) of the SEBI Act, 1992, be not imposed on it for the violations alleged and specified in the said SCN. The SCN was sent through the speed post acknowledgment due (SPAD). The said SCN was delivered to the Noticee and the proof of delivery is on record.

4. The allegations in the SCN are given below in brief:

*"1. OD observed that the Noticee had issued and listed series of Non-Convertible Debt securities (hereinafter referred to as "**NCDs**") during the period 2013 to 2014, the details of which are as follows:*

ISIN	*Listing date*
INE743C07051	*18/02/2013*
INE743C07069	*07/03/2013*

INE743C07077	*10/04/2013*
INE743C07085	*10/04/2013*
INE743C07093	*20/06/2013*
INE743C07101	*08/07/2013*
INE743C07119	*17/04/2014*

a. *With respect to above, SEBI vide emails dated July 18, 2017, July 20, 2017, July 25, 2017, July 26, 2017, August 22, 2017, August 28, 2017, September 29, 2017, January 16, 2018, January 31, 2018, February 22, 2019, advised BSE to provide details as to whether the Noticee has complied with the LODR Regulations and specific period of non-compliances, if any. BSE vide emails dated July 18, 2017, July 19, 2017, July 25, 2017, July 27, 2017, September 01, 2017, October 04, 2017, January 29, 2018, February 07, 2018, February 26, 2019 replied in this regard. The Correspondence between SEBI and BSE provided to the Noticee as Annexure-I to the SCN.*

b. *On the basis of details received from BSE, SEBI vide email dated November 02, 2018, sought clarification from the Noticee with respect to various non-compliances with LODR Regulations, as indicated by BSE. In response to the same, Noticee vide email dated November 06, 2018 provided its reply. The Correspondence between SEBI and the Noticee provided to the Noticee as Annexure-I to the SCN.*

2. *From the above, it was observed that the Noticee had not made disclosures as required under LODR Regulations in regard to aforesaid series of NCDs issued and listed by Noticee. Based on the observations, following are alleged:*

   a. *The Noticee while submitting the financial results for the period ended June 30, 2017, December 31, 2016, September 30, 2016, June 30, 2016 and March 31, 2016 has failed to disclose the line items as required u/r 52(4) of the LODR Regulations in respect of the NCDs. Thus, the Noticee has alleged to have violated Regulation 52(4) of the LODR Regulations.*

   b. *The Noticee has failed to submit to BSE, the certificate signed by the debenture trustee stating that the debenture trustee has taken note of the information as required under Regulation 52(4) for quarters ending June 30, 2016, December 31, 2016, June 30, 2017, December 31, 2017. Thus, the*

Noticee has alleged to have violated Regulation 52(5) of the LODR Regulations.

c. *The Noticee has failed to disclose to BSE in its quarterly financial statements for the period ending December 31, 2017, December 31, 2016, September 30, 2016, June 30, 2016, March 31, 2016, the extent and nature of security created and maintained with respect to its listed NCDs. Thus, the Noticee has alleged to have violated Regulation 54(2) of the LODR Regulations.*

3. *In view of the above, it is alleged as under:*

Paragraph No.	***Alleged Violation***
4.1	*Regulation 52(4) of the LODR Regulations*
4.2	*Regulation 52(5) of the LODR Regulations*
4.3	*Regulation 54(2) of the LODR Regulations*

4. The relevant provisions of LODR Regulations are reproduced hereunder:

<u>LODR Regulations, 2015</u>

52. (4) *The listed entity, while submitting half yearly /annual financial results, shall disclose the following line items along with the financial results:*

(a) credit rating and change in credit rating (if any);
(b) asset cover available, in case of non-convertible debt securities;
(c) debt-equity ratio;
(d) previous due date for the payment of interest/dividend for non-convertible redeemable preference shares/repayment of principal of non-convertible preference shares/non-convertible debt securities and whether the same has been paid or not; and,
(e) next due date for the payment of interest/dividend of non-convertible preference shares/principal along with the amount of interest/dividend of non-convertible preference shares payable and the redemption amount;
(f) debt service coverage ratio;
(g) interest service coverage ratio;
(h) outstanding redeemable preference shares (quantity and value);
(i) capital redemption reserve/debenture redemption reserve;
(j) net worth;
(k) net profit after tax;
(l) earnings per share:

Provided that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for *banks or non-banking financial companies registered with the Reserve Bank of India. Provided further that the requirement of this sub-regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.*

***(5)** While submitting the information required under sub-regulation (4), the listed entity shall submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents.*

***54. (2)** The listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities.*

Applicability of Chapters IV and V.

***63.(1)**Entity which has listed its 'specified securities' and 'non-convertible debt securities' or 'non-convertible redeemable preference shares' or both on any recognised stock exchange, shall be bound by the provisions in Chapter IV of these regulations.*

***(2)**The listed entity described in sub-regulation (1) shall additionally comply with the following regulations in Chapter V:*

(a)regulation 50(2), (3);
(b)regulation 51;
(c)regulation 52(3), (4), (5) and (6);
(d)regulation 53
(e)regulation 54
(f)regulation 55
(g)regulation 56
(h)regulation 57
(i)regulation 58
(j)regulation 59
(k)regulation 60
(l)regulation 61:

Provided that the listed entity which has submitted any information to the stock exchange in compliance with the disclosure requirements under Chapter IV of these regulations, need not re-submit any such information under the provisions of this regulations without prejudice to any power conferred on the Board or the stock exchange or any other authority under any law to seek any such information from the listed entity: Provided further that the listed entity, which has satisfied certain obligations in compliance with other chapters, shall not separately satisfy the same conditions under this chapter.

5. The aforesaid alleged violations, if established against the Noticee, will make the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act, which reads as follows:

<u>SEBI Act, 1992</u>
<u>Penalty for failure to furnish information, return, etc.</u>

15A. *If any person, who is required under this Act or any rules or regulations made thereunder, -*

(a) …….

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to 58[a penalty 59[which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;"

5. The Authorized Representative on behalf of the Noticee replied to the SCN vide letter dated December 03, 2019 to the SCN. Upon appointment of AO, the undersigned granted vide hearing notice dated March 03, 2020 an opportunity of hearing to the Noticee scheduled on March 17, 2020. Owing to the spread of Covid-19, as a precautionary measure, the said hearing scheduled on March 17, 2020 was postponed. Vide email dated April 28, 2020, Noticee was granted the opportunity of hearing on May 12, 2020, Noticee vide its e-mail dated May 05, 2020, Noticee requested to give another date of hearing after May 18, 2020 due to Covid-19 lockdown. Acceding the request of the Noticee, vide e-mail dated May 05, 2020, hearing was postponed to May 20, 2020. Noticee vide e-mail dated May 19, 2020 requested for another date of hearing after May 31, 2020 citing the reason of Covid-19. Acceding the request of Noticee, the said hearing was postponed to June 05, 2020. On the scheduled date of hearing i.e. June 05, 2020, the Company Secretary of the Noticee namely Shri Ajay Kadhao, attended the hearing and submitted additional reply vide e-mail dated June 05, 2020.

Noticee reiterated the earlier reply of the Noticee dated December 03, 2019 and June 05, 2020. During the hearing, Noticee requested for additional time to submit additional reply and acceding this request Noticee was given time till June 12, 2020. The hearing minutes are on record. Noticee submitted the additional reply vide e-mail dated June 11, 2020. Submissions made by Noticee vide letters/emails dated December 03, 2019, June 05, 2020 and June 11, 2020 are given below:

- *The Noticee is a public company whose equity shares and non-convertible debentures (NCDs) were listed on BSE Limited (BSE) and equity shares are listed on the National Stock Exchange of India Limited (NSE) and Calcutta Stock Exchange (CSE). Pursuant to the extinguishment of the Noticee's NCDs, such NCDs were delisted from BSE with effect from June 26, 2019. In addition, the equity shares of the Noticee are presently suspended from trading on the CSE, while the application for delisting such equity shares from CSE is pending. Consequently, presently only the equity shares of the Nohcee are listed on BSE.*

- *Noticee was one of the twelve (12) companies identified by the Reserve Bank of India in its directive dated June 15, 2017 ("RBI Directive") against which lenders were instructed to commence insolvency proceedings m accordance with the Insolvency and Bankruptcy Code, 2016 ("IBC"). Accordingly, the State Bank of India filed a petition before the Hon'ble National Company Law Tribunal, Mumbai bench ("NCLT") for the commencement of the corporate insolvency resolution process of the Noticee, which was admitted by Hon'ble NCLT vide its order dated July 18, 2017. Subsequently, a resolution professional was appointed to manage the affairs of the Noticee. In compliance With the provisions of the IBC, the resolution professional invited prospective investors and other persons to submit a resolution plan for the Noticee.*

- *A consortium comprising of AION Investments Private II Limited and JSW Steel Limited (the "Consortium") was the only applicant to submit a resolution plan for the Noticee (i.e., resolution plan dated March 01, 2018) ("Resolution Plan").*

- *The resolution professional subsequently presented the Resolution Plan to the committee of creditors of the Noticee ("COC") for its approval. The Resolution Plan was considered by the COC and approved by a majority vote of 98.97% of the financial creditors by value. Pursuant to such approval, the COC issued a letter of intent dated April 12, 2018 to the Consortium. Subsequently, the Hon'ble NCLT vide its order dated July 24, 2018 ("NCLT Order") approved the Resolution*

Plan (as amended and supplemented), with certain modifications. A copy of the NCLT Order is provided by the Noticee. Also, Noticee provided a copy of the disclosure dated July 26, 2018 to BSE in relation to the NCLT Order.

- *Pursuant to the NCLT Order, and with effect from August 31, 2018, the Consortium acquired management control and majority of the equity shareholding in the Noticee ("Acquisition"). Consequently, a new board of directors was constituted and a new management was appointed to manage the affairs of the Noticee. A copy of the disclosure dated August 31, 2018, in relation to implementation of the NCLT Order made by the Noticee to the BSE is provided by the Noticee.*

- *In addition, pursuant to the implementation of the Resolution Plan approved by the NCLT Order, all NCDs of the Noticee, including all the listed NCDs of the Noticee, (being part of debts of eligible financial creditors) were also settled in the matter provided in the Resolution Plan. Subsequent to such settlement of the NCDs of the Noticee, the respective debentures trustees of the NCDs issued no-objection/ no-due certificates to the Noticee.*

- *Thereafter, the Noticee compiled with all necessary formalities required for satisfaction of charges over the assets of the Noticee, extinguishment of such NCDs from the records of the depositories (i.e., National Securities Depository Limited ("NSDL") and Central Depository Services (India) Limited ("CDSL")) and delisting of such NCDs from BSE. Copies of the letters dated April 04, 2019 and April 10, 2019 received from CDSL and NSDL, respectively in relation to the extinguishment/ redemption of all the listed NCDs of the Noticee are provided by the Noticee. A copy of the notices dated June 25, 2019 and March 06, 2013 issued by BSE in relation to the delisting and redemption of the listed NCDs of the Noticee, provided by the Noticee. Consequent to such extinguishment and delisting of NCDs of the Noticee, which were earlier listed on BSE, as mentioned above, only the equity shares of the Noticee are presently listed on BSE, NSE and CSE.*

- *Noticee replied that in the SCN, it has been alleged that the Noticee had not made disclosures as required under the Listing Regulations in regard to certain series of NCDs Issued and listed by the Noticee. Accordingly, the following three (3) allegations have been made against the Noticee under the SCN,* Noticee submitted as follows.
- *Preliminary Submissions to the SCN*

(i) *Corporate Insolvency Resolution Process of the Noticee*
Pursuant to the RBI Directive, the State Bank of India filed a petition before the NCLT for the commencement of the corporate insolvency resolution process of the Noticee, which was admitted by Hon'ble NCLT vide its order dated July 18, 2017. Subsequently, the Consortium

submitted the Resolution Plan, which was approved by the COC and the Hon'ble NCLT. It is pertinent to note certain sections of the Resolution Plan, which has been approved by the Hon'ble NCLT pursuant to the NCLT Order. The relevant extracts of the Resolution Plan are as follows:

(a) Paragraph 1(d)(v) of Part I of the Resolution Plan:

"All financial liabilities (including without limitation, for any penalty, interest, fines or fees) and other liabilities and obligations which may have a financial impact on the Company, in relation to (A) any unmet export obligations under the Export Promotion Capital Goods Licenses held by the Company (whether subsisting or not); (B) any mining leases or rights (including such mining leases or rights as may have lapsed, expired or may have been cancelled) and/or agreements in relation to mining rights held by, the Company, its subsidiaries or its associates (other than the bank guarantees required to be provided by the Company in relation to the mines allocated to the Company(i.e. Gare Palma IV/7 coal mine, the Hahaladdi iron-ore mine, the Gaitra limestone mine and the Guma-Pausari limestone mine); (C) any investigation, inquiry or show-cause, whether civil or criminal: (D) any non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses. approvals. consents or permissions: (E) change of control, transfer charges, unearned increase, compensation, or any other such liability whatsoever under any contract, agreement, lease, license, approval, consent, privilege or permission to which the Company or its subsidiaries, joint ventures or associates are entitled; (F) any leasehold rights or freehold rights to movable or immovable properties in the possession of the Company, (G) any contracts, agreements or commitments made by the Company; and (H) cross subsidies availed by the Company in relation to power generation by the Company, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future. whether or not set out in the A/L Statement, the balance sheets of the Company or the profit and loss account statements of the Company or the February 21 Creditor List, in relation to anv period prior to the Acquisition or arising on account of the Acquisition will be written of (in full and will be deemed to be permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan, and the Company and/ or the Consortium shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. It is clarified that the extinguishment of liabilities as set out in this section 1(d)(v) shall not prejudice the imposition of any liability on the Existing Promoters or any existing or former members of the management of the Company

including pursuant to any investigation, inquiry or show-cause, whether civil or criminal, against the Existing Promoters or any existing or former members of the management of the Company. It is further clarified that the Consortium and the members of the Board of Directors and management of the Company who are appointed on or after the Acquisition shall not be liable, in any manner whatsoever, for any criminal action or liability in relation to any inquiries, investigations, notices, causes of action, suits, claims, disputes, litigation or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Company or the affairs of the Company in relation to any period prior to the Acquisition or arising on account of the Acquisition"

(b) Paragraph 1(e)(iv) of Part I of the Resolution Plan:

"Other than the proceedings set out in Part B of Annexure 4, all inquiries, investigations, notices, causes of action, suits, claims, disputes, litigation, arbitration, or other judicial, regulatory or administrative proceedings against or in relation to, or in connection with the Company or the affairs of the Company (other than against the Existing Promoters or any exiting or former members of the management of the Company), pending or threatened, present or future, (including without limitation, the proceedings specifically set out in Annexure 1 and Part A of Annexure 4), in relation to any period prior to the Acquisition or arising on account of the Acquisition shall be deemed to be withdrawn or dismissed and all liabilities or obligations in relation thereto, whether or not set out in the A/L Statement, the balance sheets of the Company or the profit and loss account statements of the Company or the February 21 Creditor List, will be deemed to have been written off in full and permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan, and the Company and/or Consortium shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. By virtue of the order of the NCLT approving this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Company in relation to any period prior to the Acquisition or on account of the Acquisition. It is further clarified that the Consortium and the members of the Board of Directors and management of the Company who are appointed on or after the Acquisition shall not be liable, in any manner whatsoever, for any criminal action or liability in relation to any inquires, investigations, notices, causes of action, suits, claims, disputes, litigation or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the

Company or the affairs of the Company in relation to any period prior to the Acquisition or arising on account of the Acquisition."

- *Submissions in terms of the Resolution Plan*
  - (i) *All financial liabilities (including penalties) and other liabilities and obligations which may have a financial impact on the Noticee, whether admitted or not, due or contingent, asserted or unasserted, known or unknown, present or future and which are in relation to any period prior to the Acquisition will be written off in full and will be deemed to be permanently extinguished by virtue of the NCLT Order ("Extinguished Financial Liabilities").*
  - (ii) *Any investigation, inquiry, show-cause notice, whether civll or criminal, and any non-compliance of provisions of any laws, rules and regulations, whether admitted or not, due or contingent, asserted or unasserted, known or unknown, present or future and which are in relation to any period prior to the Acquisition will be written off in full and will be deemed to be permanently extinguished by virtue of the NCLT Order ("Extinguished Proceedings").*
  - (iii) *The Noticee shall, at no point of time, directly or indirectly, be held responsible or liable in relation to the Extinguished Financial Liabilities and/or the Extinguished Proceedings.*
  - (iv) *All inquiries, investigates, notices, causes of actions, disputes and litigation or other judicial, regulatory or administrative proceedings, against or in relation to the Noticee, present or future in relation to any period prior to the Acquisition shall be deemed to be withdrawn or dismissed and all liabilities or obligations in relation thereto will be deemed to have been "Written off in full and permanently extinguished by virtue of the NCLT Order.*
  - (v) *All new inquiries, investigations, notices, claims and litigation or other judicial, regulatory or administrative proceedings in relation to any period prior to the Acquisition will be deemed to be barred and will not be initiated or admitted against the Noticee by virtue of the NCLT Order.*

- *Noticee submitted that, the Acquisition took place on the Effective Date (as defined in the Resolution Plan) i.e., on August 31, 2018. Since the present SCN deals with the alleged non-disclosure under the Listing Regulations by the Noticee during the period of March 31, 2016 to December 31, 2017 (i.e., prior to the date of Acquisition), the violations alleged in the SCN are deemed to be permanently extinguished and the SCN is deemed to be barred and cannot be initiated or admitted against the Noticee pursuant to the NCLT Order. In terms of the Resolution Plan, all liabilities and obligations which may have a financial impact on the Noticee which are in relation to any period prior to the Acquisition are deemed to have been permanently extinguished. Accordingly, Noticee submtted that no liability (including any penalty) is permitted to be imposed on the Noticee* *if such penalty is in relation to the period prior to the Acquisition by virtue of the NCLT Order Therefore, no penalty can be imposed on the Noticee pursuant to the present SCN as the SCN is in relation to a period prior to the Acquisition.*

- *Noticee submitted that, the same has been evidenced in paragraph 11 of the NCLT Order. Paragraph 11 of the NCLT Order is reproduced, as follows:*

  "11. In respect to the treatment of other creditors, this approved resolution plan discloses that all other liabilities and obligations of the Corporate Debtor are being extinguished in full and all litigations and proceedings in respect to debts pending against the Corporate Debtor prior to the commencement of CIRP shall stand abated as the liquidation value due to those creditors as per the waterfall mechanism under Section 53 of the Code is NIL, but whereas the Financial Creditors and other creditors will continue to be entitled to enforce their rights against the existing promoters of the Corporate Debtor and the existing promoters will continue to be liable in relation to any pending litigation against them. Since the terms in respect to liabilities and obligations of the Corporate Debtor and the right of financial creditors against the promoters of the Corporate Debtor are hereby approved."

- *Noticee submitted that the allegations in the SCN in relation to the Noticee lack merit and are liable to be set aside on this ground alone. Further, the intent of IBC should be taken into consideration in relation to the peculiar facts of the matter. Once a resolution plan is approved, it is binding on all concerned, including any regulatory or quasi-judicial authority such as SEBI. The purpose of the entire resolution process under the IBC is to ensure that once the resolution plan is approved, the resolution applicant starts running the business of the company on a fresh slate, and such resolution applicant cannot be faced with past liabilities and obligations of the company. In this regard, Noticee referred the judgment of the Hon'ble Supreme Court of India in the matter of "Committee of Creditors of Essar Steel India Limited through Authorized Signatory vs Satish Kumar Gupta & Ors.". The relevant portion of the judgment is as follows:*

  "66. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were ..

  67 … A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who *successfully takes over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that the resolution applicant knows exactly what has to be paid in order that it may take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us herein above. For these reasons, the NCLAT judgment must also be set aside on this count."*

- Noticee *submitted that, in terms of the Resolution Plan and in view of the judgment of the Hon'ble Supreme Court of India in the matter of "Committee of Creditors of Essar Steel India Limited through Authorized Signatory vs Satish Kumar Gupta & Ors., fresh proceedings (such as the SCN) cannot be initiated for liabilities and/or obligations of the Noticee arising prior to the Acquisition. It is further submitted that if SEBI were to initiate any such proceeding, then such proceeding ought to have been initiated by SEBI prior to the approval of the Resolution Plan pursuant to the NCLT Order. The allegations against the Noticee in the SCN relate to the period during March 31, 2016 to December 31, 2017 i.e., prior to the initiation of the insolvency proceedings as well as for the period during which insolvency proceedings were in process against the Noticee. However, the SCN has been issued against the Noticee only in October, 2019 i.e., after a period of around three (3) years and much after the NCLT Order approving the Resolution Plan. Further, it is submitted that if the proceedings initiated pursuant to the SCN are continued against the Noticee, such proceedings would be in contravention to the directions of the Hon'ble Supreme Court of India, as detailed in the aforesaid judgment as it would put an additional liability on the Noticee, and therefore result in the Consortium/ new management of the Company being faced with "undecided" liabilities after the Resolution Plan has been accepted by the NCLT.*

- *Noticee submitted that if any action ought to be taken by SEBI in relation to the alleged non-disclosures under the Listing Regulations, such action should only be undertaken against the erstwhile promoters/ management of the Noticee and/or persons, who at the time of the alleged non-disclosures, were in charge of and responsible to the Noticee for the conduct of the business of the Noticee, and not the Noticee Itself. In this regard, Noticee referred the judgment of the National Company Law Appellate Tribunal, New Delhi in the matter of 'Securities and Exchange Board of India vs Assam Company India Limited and Ors.". In the said matter, SEBI had challenged the order of the approval of a resolution plan for Assam Company India Limited ('ACIL") by the National Company Law Tribunal, Guwahati Bench in so far as it has the effect of indirectly denuding the* *jurisdiction of SEBI over ACIL as pursuant to such resolution plan, ACIL would get delisted. The relevant extract of the judgment is reproduced below:*

"9. It was submitted that the approved Resolution Plan in so far as it has the effect of denuding the jurisdiction of Appellant under the provisions of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act"), in an indirect manner, the 1st Respondent without having taken any steps to file its reply/ objections against the interim order dated 08.12.2017 passed by Appellant or seeking an opportunity of hearing with respect thereto or challenging the same before the appropriate Forum, contravened the SEBI Act and thereby hit by the provisions of Section 30 (2) (e) of the Insolvency and Bankruptcy Code, 2016.

10. Further, according to Appellant the effect of the impugned clause in the Resolution Plan is that the Equity Shares of the 1st Respondent shall stand delisted from the concerned Stock Exchanges viz. National Stock Exchange of India Ltd. and BSE Ltd., will not only render the examination/ action initiated by Appellant - SEBI in conjunction with the said Stock Exchanges against the 1st Respondent nugatory and ineffective, but also consequently compel Public Share Holders to exit for a very meagre amount, which would not be in the interest of investors and the Securities market.

11….. The inclusion of delisting of Securities in the Resolution Plan is clearly an attempt to wriggle out of the Jurisdiction of and proceedings instituted by Appellant.

35. For the reason aforesaid, we are not inclined to interfere with the impugned order of approval dated 20th September, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Guwahati Bench. However, the order passed by the Adjudicating Authority or this Appellate Tribunal will not come in the way of the SEBI or any competent authority to take steps against erstwhile Promoters, Directors or Officers or others, if any or all of them had violated any of the provisions under SEBI Act or rule framed thereunder or any other law as may be taken against such person of listed company... "

- *Obligations of the Noticee under the Listing Regulations -Noticee submitted that pursuant to the delisting of NCDs from BSE, with effect from June 26, 2019, only the equity shares of the Noticee are listed on BSE, NSE and CSE. However, prior to such delisting, since the equity shares and NCDs of the Noticee were listed on BSE, the Noticee was required to comply with the provisions of Chapter VI of the Listing Regulations (i.e., obligations of listed entity which has its specified securities and either non-convertible debt securities or non-convertible redeemable preference shares or both). In terms of Regulation 63 under Chapter*

VI of the Listing Regulations, the Noticee was, inter alia, required to comply with Regulations 52(4), 52(5) and 54 of the Listing Regulations. Accordingly, it is submitted that the Noticee did comply with the relevant provisions of the Listing Regulations, as aforesaid during the period when such provisions were applicable to the Noticee…With respect to allegation of regulation 52(4) requires every listed company to disclose certain items along with its financial results, while submitting half yearly/ annual financial results. In this regard, Noticee submitted the following:

- *Regulation 52(4) of the Listing Regulations states as follows:*

  "The listed entity, while submitting half yearly/ annual financial results, shall disclose the following line items along with the financial results.

  (a) credit rating and change in credit rating (if any).

  (b) asset cover available, in case of non-convertible debt securities,

  (c) debt-equity ratio;

  ……….

  ………

- *Further, the terms "half year" and "half yearly results" are defined under Regulations 2(l)(k) and 2(1)(1) of the Listing Regulations respectively, as follows:*

  "half year" means the period of six months commencing on the first day of April or October of a financial year; "

  "half yearly results" means the financial results prepared in accordance with these regulations in respect of a half year."

- *The period of financial year of the Noticee is from April - March. In view of the above, only the financial statements of the Noticee for the quarters ended on September 30 and March 31 of every year will constitute the half-yearly and annual financial results of the Noticee. The obligation to make disclosures under Regulation 52(4) of the Listing Regulations only arises in relation to the half-yearly and annual financial results of the listed company. Accordingly, the obligation to make disclosures under Regulation 52(4) of the Listing Regulations arises only in relation to the financial results of the Noticee for the quarters ended on September 30 and March 31 of each year. Therefore, the allegation that the Noticee has not made disclosures under Regulation 52(4) of the Listing Regulations while submitting the financial results for the quarters ended June 30, 2016, December 31, 2016 and June 30, 2017 is not sustainable as there was no obligation on the Noticee to make a disclosure under Regulation 52(4) of the Listing Regulations for the aforesaid quarters. Noticee submitted that it has made the relevant disclosure under Regulation 52(4) of the Listing Regulations for the quarter ended on September 30, 2016 to BSE vide its letter dated December 14, 2016. A copy of the said letter dated December 14, 2016 provided by the Noticee*

- *With respect to the allegation of regulation 52(5) of the Listing Regulations, at the relevant time, required listed companies to submit to the stock exchanges, while submitting the information required under regulation 52(4) of the Listing Regulations, a certificate signed by the debenture trustee that it has taken note of the contents. In this regard Noticee submitted that Since Regulation 52(5) of the Listing Regulation uses the words, "while submitting the information required under sub-regulation (4)... ", the requirement to submit information under Regulation 52(5) of the Listing Regulations is only applicable for the period specified under Regulation 52(4) of the Listing Regulations. Accordingly, since Regulation 52(4) of the Listing Regulations requires listed companies to submit information only while submitting the half-yearly/ annual financial results of the listed company, the requirement to submit information under regulation 52(5) of the Listing Regulations is only applicable in relation to the half-yearly/ annual financial results of the Notlcee. It has been alleged that the Noticee has not made the disclosure under regulation 52(5) of the Listing Regulations for the quarters ended on June 30, 2016, December 31,2016, June 30,2017 and December 31,2017. However, as stated above, since these quarters do not relate to the half-yearly/ annual financial results of the Noticee, the Noticee was not required to make any disclosures under Regulation 52(5) of the Listing Regulations.Therefore, Noticee submitted that the allegation of 52(5) of the Listing Regulations lacks merit and is completely unsustainable against the Noticee. So the said allegation does not hold good against the Noticee and accordingly, the SCN is liable to be set aside.*

- *With respect to allegation of Regulation 54(2) of the Listing Regulations requires every listed company to disclose to the stock exchange in its quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities. In this regard Noticee submitted that the relevant disclosure in relation to the nature of security created and maintained in relation to the NCDs has been disclosed by the Noticee in its annual reports. In this regard, Noticee referred the extract from 'Notes to Financial Statements for the year ended 31 March 2018' in the annual report of the Noticee for the financial year ended on March 31, 2018, made in relation to the NCDs (ref: page 91 of the annual report for the financial year ended on March 31, 2018):*

  "Secured by first charge on all immovable and movable assets (present & future) of the company (subject to prior charges on movables in favour of working capital banks) ranking pari -passu with the charges created in favour of participating financial institutions. Some of the loans I facilities are also guaranteed by the Managing Director of the company."

  Noticee provided the copy of extracts of the annual reports for the financial years ended on March 31, 2016, March 31, 2017 and March 31, 2018.

Noticee submitted that the requisite disclosures have been made by the NotIcee in the relevant annual reports. Further, no shareholder's or debenture holder's interest has been prejudiced by way of said allegation. Without prejudice to the aforesaid, since such disclosures have been made in the annual reports, Noticee submitted that the non-compliance, if any, as alleged against the Noticee in the SCN can, at the most, comprise of a technical non-compliance and does not merit the issuance of the SCN against the Noticee.

- *Noticee submitted that the allegations made against the Noticee lack merit and therefore, are not sustainable against the Noticee. In addition and without prejudice to the aforesaid, even if SEBI is of the view that the Noticee has committed the non-compliances as stated in the SCN, such allegations can, at the most, only constitute technical non-compliance. It is submitted that the non-disclosure of such information has not prejudiced the interest of any shareholder or debenture holder of the Noticee and considering the fact that the said NCDs of Noticee were extinguished and delisted from BSE, no case against the Noticee can be made out by SEBI. In fact, it is submitted that SEBI should acknowledge and appreciate the fact that a listed company has been revived pursuant to the IBC, and at this stage (i.e., after the NCLT Order and completion of Acquisition), SEBI cannot initiate proceedings against the Noticee in relation to alleged non-compliances committed by the Noticee (under the previous management) prior to the NCLT Order and Acquisition. It is further submitted that the Consortium, which has successfully completed the Acquisition Itself comprises of a listed company, which has ensured a robust compliance framework with respect to applicable laws, and as such, any alleged past non-compliance of the Noticee should not become a burden on such compliant entities.*

- *Noticee referred Section 32A of the (Indian) Insolvency and Bankruptcy Code, 2016 ("Code"), which has been introduced in the Code by way of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 (with effect from 28 December 2019) and sought protection under Section 32A of IBC from the allegations made in the SCN such that all its liability for any offence(s) that may have been committed prior to the commencement of the corporate insolvency resolution process ceases, and that the Noticee is not prosecuted for any such offence(s) from the date the resolution plan has been approved by the 'Adjudicating Authority' under Section 31 of the Code (i.e., from the date of the NCLT Order). With regard to section 32A of the IBC, Noticee referred the following judgements:*

- *The judgment of the Hon'ble High Court of Delhi, in the matters of Tata Steel BSL Limited & Ors vs. Union of India & Ors. The relevant portions of the judgment are as follows:*

“3. In terms of the Resolution Plan, the management of the petitioner company has been taken over by new promoters, who are not connected with the previous management.

4. The learned counsel appearing for the petitioner submits that in terms of Section 32A of the IBC, as inserted by virtue of the Insolvency of Bankruptcy Code (Amendment) Act, 2020; the petitioner is required to be discharged from the aforesaid proceedings.

5. Section 32A(1) of the IBC, as inserted by the aforementioned Act, is set out below:

"32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 or any "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section."

6. It is clear from the express language of the aforementioned provision that a Corporate Debtor would not be liable for any offence committed prior to commencement of the CIRP and the corporate debtor would not be prosecuted if a resolution plan has been approved by the Adjudicating Authority.

7. In the present case, there is no dispute that a resolution plan has been approved by the Adjudicating Authority (NCLT) and in the circumstances, there is much merit in the contention that the petitioner cannot be prosecuted and is liable to be discharged.”

- *The judgement of the Hon'ble High Court of Delhi in the matters of Angul Energy Limited vs. Union of India and Ors. has held that:*

"3. In terms of the Resolution Plan, the management of the petitioner company has been taken over by new promoters, who are not connected with the previous management.

4. The learned counsel appearing for the petitioner submits that in terms of Section 32A of the IBC, as inserted by Section 10 of the Insolvency of Bankruptcy Code (Amendment) Ordinance, 2019; the petitioner is required to be discharged from the aforesaid proceedings.

5. Section 32A(1) of the IBC, as inserted by the aforementioned ordinance, is set out below:

"32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 or any "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section."

6.It is clear from the express language of the aforementioned provision that a Corporate Debtor would not be liable for any offence committed prior to commencement of the CIRP and the corporate debtor would not be prosecuted if a resolution plan has been approved by the Adjudicating Authority.

7. In the present case, there is no dispute that a resolution plan has been approved by the Adjudicating Authority (NCLT) and in the circumstances, there is much merit in the contention that the petitioner cannot be prosecuted and is liable to be discharged."

- *The judgment of the Hon'ble National Company Law Appellate Tribunal, New Delhi in the matter of JSW Steel Ltd. vs. Mahender Kumar Khandelwal & Ors'.*

The relevant portion of the judgment is as follows:

> *"43. A plain reading of Section 32A (1) and (2) clearly suggests that the Directorate of Enforcement/ other investigating agencies do not have the powers to attach assets of a 'Corporate Debtor', once the 'Resolution Plan' stands approved and the criminal investigations against the 'Corporate Debtor' stands abated. Section 32A of the 'I&B Code' does not in any manner suggest that the benefit provided thereunder is only for such resolution plans which are yet to be approved. Further, there is no basis to make distinction between a resolution applicant whose plan has been approved post or prior to the promulgation of the Ordinance.*
>
> *………*
>
> *45. The Union of India had unequivocally stated that after the completion of the 'Corporate Insolvency Resolution Process', there cannot be any threat of criminal proceedings against the 'Corporate Debtor', or attachment or confiscation of its assets by any investigating agency, after approval of the 'Resolution Plan'. In any event, by virtue of Section 238 of the 'I&B Code', the 'I&B Code' has an overriding effect over anything inconsistent therewith in any other law. Accordingly, it is clear that subsequent promulgation of the Ordinance is merely a clarification in this respect. Therefore, it is ex facie evident that the Ordinance being clarificatory in nature, must be made applicable retrospectively."*

- *The judgment of the Hon'ble High Court of Rajasthan at Jodhpur, in the matter of Ultra Tech Nathdwara Cement Ltd. vs. Union of India & Ors. The relevant extract of the judgment is reproduced below:*

> *"10. Learned Senior Counsel urged that Section 31 of the IBC which originally read as approval of resolution Plan*
>
> *(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section(4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.*
>
> *(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.*
>
> *(3) After the order of approval under sub-section (1)-*
>
> *(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and*
>
> *(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.*
>
> 11 *was amended vide gazette notification dated 6.8.2019 in the following terms:-*

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor

and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

"12.This Court was further apprised that while the amendment was being adopted in the upper house of the Parliament, Hon'ble the Finance Minister with reference to the questions/issues raised by the Members of the parliament, clarified the legislative intent behind the amendment in Section 31(1) of the IBC in the following terms:

"IBC has actually an overriding effect. For instance, you asked whether IBC will override SEBI. Section 238 provides that IBC will prevail in case of inconsistency between two laws. Actually, Indian courts will have to decide, in specific cases, depending upon the material before them, but, largely, yes, it is IBC.

There is also this question about indemnity for successful resolution applicant. The amendment now is clearly making it binding on the Government. It is one of the ways in which we are providing that. The Government will not raise any further claim. The Government will not make any further claim after resolution plan is approved. So, that is going to be a major, major sense of assurance for the people who are using the resolution plan."

………..

18. It cannot be gainsaid that the controversy at hand hours around the simple issue as to whether the resolution plan approved by the COC is binding on the department or not. In this regard, it is trite to note that as per the amended Section 31 of the IBC referred to supra, the Central Govt., State Govt. or any other local authority to whom, a debt in respect of payment of dues arising under any law for the time being in force are owed, have been brought under the umbrella of the resolution plan approved by the adjudicating officer which has been made binding on such governments and local authorities. The purpose of the IBC is salutary as it has been enacted to ensure that an industry under distress does not fade into oblivion and can be revived by virtue of the resolution plan. Once the offer of the resolution applicant is accepted and the resolution plan is approved by the appropriate authority, the same is binding on all concerned to whom the industry concern may be having statutory dues. No right of audience is given in the resolution proceedings to the operational creditors viz. the Central Govt. or the State Govt. as the case may be.

19. The reply given by Hon'ble the Finance Minister (referred to supra) emphatically conveys that the revival of the dying industry is of primacy and to secure this objective, the government would be ready to sacrifice, leaving its interest finally in the hands of the resolution professional and the COC as the case may be. Precedence in the Scheme of the Act is given to secure the interest of the financial creditor. On this aspect of the matter, the following extracts are referred to in the case of Essar Steel:

……………..

66. Section 31(1) of the Code makes it clear that once a resolution plan is a approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution Applicant starts running the business of the corporate debtor on a fresh state as it were.

67. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an a appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. As successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count."

20. *Considered in light of the ratio of the above judgment and the stance of Hon'ble the Finance Minister before the upper house of the Parliament, it is clear that the financial creditors have to be given a precedence in the ratio of payments when the resolution plan is being finalized. It is the financial creditors who are given right to vote in the COC whereas, the operational creditors viz. Commercial Taxes Department of the Central Government or the State Government as the case may be, have no right of audience. The purpose of the statute is very clear that it intends to revive the dying industry by providing an opportunity to a resolution applicant to take over the same and begin the operation on a clean slate. For that purpose, the evaluation of all dues and liabilities as they exist on the date of finalization of the resolution plan have been left in the exclusive domain of the resolution professional with the approval of the COC. The courts are given an extremely limited power of judicial review into the resolution plan duly approved by the COC. In the case at hand, the situation has proceeded much further. The operational creditors i.e. the Commercial Taxes Department of Govt. of Rajasthan as well as the respondent Commissioner of Goods and Service Tax assailed the resolution plan by filing appeals before Hon'ble the Supreme Court with a specific plea that their dues have not been accounted for by the COC in the resolution plan. The objection so raised stands repelled with the rejection of the appeals by Hon'ble Supreme Court. In addition, thereto, it may be mentioned here that from the two possible situations; one being liquidation and the other being revival, the respondents will gain significantly in the later because as per the assessed liquidity value, their dues have been assessed as nil, whereas as per the resolution plan with revival of the industry at the instance of the resolution applicant (the petitioner company herein), their rights have been secured to the extent of Rs. 72 crores odd. It may be emphasized here that the amount of Rs. 72*

crores assessed by the resolution professional in favour of the respondent GST Department has already been deposited by the successful resolution applicant i.e. the petitioner company."

7. After taking into account, the allegations levelled in the SCN, reply to SCN and other material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

6. The issues arising for consideration in the instant proceedings before me are:-

(a) Whether the Noticee has violated the provisions of regulations 52(4), 52(5) and 54(2) of LODR Regulations, 2015.

(b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992 for the alleged violations by the Noticee?

(c) If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995?

8. Before proceeding further, I refer to the relevant provisions LODR Regulations, 2015 which are reproduced hereunder:

LODR Regulations, 2015

52(4): *The listed entity, while submitting half yearly /annual financial results, shall disclose the following line items along with the financial results:*

(a) credit rating and change in credit rating (if any);

(b) asset cover available, in case of non-convertible debt securities;

(c) debt-equity ratio;

(d) previous due date for the payment of interest/dividend for non-convertible redeemable preference shares/repayment of principal of non-convertible preference shares/non-convertible debt securities and whether the same has been paid or not; and,

(e) next due date for the payment of interest/dividend of non-convertible preference shares/principal along with the amount of interest/dividend of non-convertible preference shares payable and the redemption amount;

(f) debt service coverage ratio;
(g) interest service coverage ratio;
(h) outstanding redeemable preference shares (quantity and value);
(i) capital redemption reserve/debenture redemption reserve;
(j) net worth;
(k) net profit after tax;
(l) earnings per share:

Provided that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non-banking financial companies registered with the Reserve Bank of India. Provided further that the requirement of this sub-regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

52(5): *While submitting the information required under sub-regulation (4), the listed entity shall submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents.*

54(2): *The listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities.*

FINDINGS:

7. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under:

Issue (a): Whether the Noticee has violated the provisions of regulations 52(4), 52(5) and 54(2) of LODR Regulations, 2015?

(a) It is alleged in the SCN that Noticee failed to disclose the line items while submitting the financial results for the period ended June 30, 2017, December 31, 2016, September 30, 2016, June 30, 2016 and March 31, 2016 as prescribed under regulation 52(4) of the LODR Regulations, 2015. Further, it is alleged that Noticee failed to submit to BSE, the certificate signed by the debenture trustee stating that the debenture trustee has taken note of the information as required under regulation 52(4) for quarters ending June 30, 2016, December 31, 2016, June 30, 2017, December 31, 2017 as required under the regulation 52(5) of the LODR Regulations, 2015. It is also alleged in the SCN that Noticee has failed to disclose to BSE in its quarterly financial statements for the period ending December 31, 2017, December 31, 2016, September 30, 2016, June 30, 2016, March 31, 2016, the extent and nature of security created and maintained with respect to its listed NCDs as prescribed under regulation 54(2) of the LODR Regulations. Therefore, it is alleged in SCN that Noticee violated the provisions of regulations 52(4), 52(5) and 54(2) of LODR Regulations, 2015.

(b) Before moving forward, it will be appropriate to refer to various contentions of the Noticee regarding initiation of instant proceedings, given that pursuant to the NCLT order dated July 24, 2018 approving the Resolution plan under Indian Bankruptcy Code, 2016 (IBC), the Noticee has been taken over by new management and directors. The said contentions are interalia as follows: i) all liabilities and obligations which may have a financial impact related to period prior to the Acquisition other than the ones which are mentioned in resolution plan are deemed to be permanently extinguished and hence, no liability (including any penalty) is permitted to be imposed on the Noticee in relation to the period prior to the Acquisition ii) resolution process under the IBC is to ensure that once the resolution plan is approved, the resolution applicant starts running the business of the Company(Noticee) of a fresh slate and therefore, fresh proceedings cannot be initiated for liabilities and/or obligations of the Noticee arising prior to the Acquisition. iii) SCN is issued on October, 2019, much after approval of Resolution

Plan and such proceeding ought to have been initiated by SEBI prior to the approval of the Resolution Plan pursuant to the NCLT Order. iv) It is submitted by the Noticee that the continuation of such proceeding would only put an additional liability on the Noticee, and therefore result in the Consortium/ new management of the Company being faced with "undecided" liabilities after the Resolution Plan has been accepted by the NCLT v) Further, Noticee contended that if any action is ought to be taken by SEBI in relation to the alleged non-disclosures under the Listing Regulations, such action should only be initiated against the erstwhile promoters/ management of the Noticee and not the Noticee itself. vi) Noticee sought protection under the newly introduced section 32A of the IBC, from the allegations made in the SCN such that all its liability for any offence(s) that may have been committed prior to the commencement of the corporate insolvency resolution process ceases, and that the Noticee is not prosecuted for any such offence(s) from the date the resolution plan has been approved by the 'Adjudicating Authority' under Section 31 of the Code (i.e., from the date of the NCLT Order).

As regards the said contentions, I note that that the present proceedings are against the Noticee and not against the new/erstwhile promoters and/or directors and that the Noticee is a going concern and required to fulfil its regulatory obligations/filings/disclosures etc. As regards Noticee's submissions along with case laws regarding section 32A of the IBC, I note that the alleged violations (FY15-16, 16-17) and the issuance of instant SCN (October 18, 2019) are both prior to the said amendment (December 2019), hence the immunity under amendment does not apply in the instant matter. As regards, the various contentions of the Noticee that the instant or such proceedings need to be initiated against erstwhile management and not the current/new management/Noticee, it is beyond my ambit to comment on the same. My role within contours of Adjudication Rules, 1995, is to adjudge the alleged violation by the Noticee which is mentioned in the AO communique shared with the Noticee, I shall therefore deal with the charges levelled against Noticee by the OD taking into consideration all the material on record. Having clarified regarding contentions of the Noticee on the technical validity of these proceedings, the matter is now being dealt with on merits of the case as discussed hereinafter.

(c) As per regulation 52(4) of LODR Regulations, 2015, the listed entity, while submitting half yearly /annual financial results, shall disclose the line items along with the financial results. In the SCN, it is alleged that the Noticee failed to disclose the line items for the period ended June 30, 2017, December 31, 2016, September 30, 2016, June 30, 2016 and March 31, 2016. In this regard, Noticee replied that the provision of regulation 52(4) of LODR Regulations, 2015 speaks about half yearly or annual financial results and not about the quarters. Hence the said violation is applicable only for the period ended March 31, 2016 and September 30, 2016 and not for the quarter ended June 30, 2017, December 31, 2016 and June 30, 2016. In this regard, reply of the Noticee is acceptable to me as the said provision of regulation 52(4) prescribed about the half yearly and annual financial results and not mentioned about the quarter. Therefore, relevant allegations are only the period ended March 31, 2016 and September 30, 2016. For the said disclosure as prescribed in the regulation 52(4) of LODR Regulations, 2015, Noticee replied that it made the disclosures and provided a copy of disclosure made to BSE for the period ended September 30, 2016. However, for the period ended March 31, 2016, Noticee has not provided any copy of disclosure made to

BSE. Therefore, I am of the view that Noticee did not make any disclosure for the period ended March 2016 and hence, the alleged violation for the period ended March 2016 stands established.

(d) As per regulation 52(5) of LODR Regulations, 2015, the listed entity shall submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents while submitting the information required under regulation 52(4) of LODR Regulations, 2015. As per regulation 52(4) of LODR Regulations, 2015, the listed entity shall disclose the line items along with the financial results while submitting half yearly /annual financial results. It is alleged in the SCN that Noticee failed to submit to BSE, the certificate signed by the debenture trustee stating that the debenture trustee has taken note of the information for quarters ending June 30, 2016, December 31, 2016, June 30, 2017 and December 31, 2017. In this regard, Noticee replied that the requirement to submit information under regulation 52(5) of the Listing Regulations is only applicable in relation to the half-yearly/ annual financial results of the Noticee and allegations in the SCN are for quarters ended on June 30, 2016, December 31, 2016, June 30, 2017 and December 31, 2017. Noticee replied that since these quarters do not relate to the half-yearly/ annual financial results of the Noticee, the Noticee was not required to make any disclosures under regulation 52(5) of the Listing Regulations. In this regard, I note that the allegations against the Noticee is for the quarter ended June 30, 2016, December 31, 2016, June 30, 2017 and December 31, 2017 whereas the said provision of LODR Regulations, speaks about the half yearly and financial results. Therefore, the said allegation of violation of regulation 52(5) of LODR Regulations, 2015 against Noticee does not stand established.

(e) Further, as per regulation 54(2) of LODR Regulations, 2015, the listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities. It is alleged in the SCN that Noticee has failed to disclose to BSE in its quarterly financial statements for the period ending December 31, 2017, December 31, 2016, September 30, 2016, June 30, 2016, March 31, 2016, the extent and nature of security created and maintained with respect to its listed NCDs. In this regard, Noticee replied that the said requirements were included in its annual report and provided the extract copy for financial years ended on March 31, 2016, March 31, 2017 and March 31, 2018. In this regard, I am of the view that Noticee was required to make disclosure to the stock exchange regarding the nature of security created and maintained with respect to its secured listed non-convertible debt securities. By including the said requirement in its annual report is not akin to compliance of the said provisions of LODR Regulations, 2015. Also, as record available, it is observed from the BSE e-mail that Noticee has not complied with the said provision of LODR Regulations, 2015. Therefore, allegation of the provision of regulation 54(2) of LODR Regulations, 2015 stands established.

(f) In view of the above, I am of the view that Noticee violated the provisions of regulations 52(4) and 54(2) of LODR Regulations, 2015 by not making the required disclosures as specified in the aforesaid LODR Regulations, 2015. Therefore, the allegations of violation provisions of regulations 52(4) and 54(2) of

LODR Regulations, 2015 in SCN stand established for the specific instances mentioned above.

Issue (b): *Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992 for the alleged violations by the Noticee?*

After taking into account the aforesaid entire facts / circumstance of the case, it is noted that the said violations of provisions of section 15A(b) of the SEBI Act, 1992 by the Noticee attracts the imposition of monetary penalties upon the Noticee under section 15J of the SEBI Act, 1992 which is reproduced below:

The SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

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

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Issue (c) - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995?

a) While determining the quantum of penalty under section 15J of SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995 , which reads as under:-

The SEBI Act, 1992

***15J**: "Factors to be taken into account by the adjudicating officer-*

While adjudging quantum of penalty under section 23 I, 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."

b) I observe, that the material available on record, does not quantify disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to such failure on the part of the Noticee. Material on record does not show that failure is repetitive in nature. I find that the Noticee violated the provisions of regulation 52(4) and 54(2) of LODR Regulations, 2015.

c) Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of Rs. 6,00,000 (Rupees Six Lakh only) will be commensurate with the violations of violated the provision of regulations regulation 52(4) and 54(2) of LODR Regulations, 2015 under section 15A(b) of the SEBI Act, 1992 committed by the Noticee.

ORDER

8. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of Rs. 6,00,000 (Rupees Six Lakh only) on the Noticee i.e. Monnet Ispat & Engineering Limited under section 15A(b) of the SEBI Act, 1992 for violations of provision of regulations 52(4) and 54(2) of LODR Regulations, 2015.

9. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:

a. By using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html
b. By way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai

10. Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

    a) Case Name
    b) Name of the 'Payer/Noticee'
    c) Date of Payment
    d) Amount Paid
    e) Transaction No.
    f) Bank Details in which payment is made
    g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

11. 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, 1992.

12. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of rule 6 of the Adjudication Rules, 1995.

Date: June 26, 2020 **SANGEETA RATHOD**

Place: Mumbai **ADJUDICATING OFFICER**