

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

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

**In respect of:**

SL. No.	Name of the Entity	PAN	Order No.
1	Mr. B. K. Narula (HUF)	AAAHB4455L	MAA/AO/VK/30843/1/2017-18
2	Ms. Sidhi Narula	AAEPN0229N	MAA/AO/VK/30845/1/2017-18
3	Ms. Ridhi Narula	ACKPN7385D	MAA/AO/VK/30846/1/2017-18
4	M/s Solar Renewable Urja Pvt. Ltd.	AANCCS7337J	MAA/AO/VK/30848/1/2017-18

**In the Matter of:**

**M/s Orosil Smiths India Limited (Formerly known as Silver Smith India Ltd.)  
Flat No. - 620, Hemkunt Chambers,  
89 Nehru Place,  
New Delhi-110019**

1. The instant proceeding is in compliance with the directions of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "Hon'ble SAT") issued in Appeal No. 511 of 2015 wherein the Hon'ble SAT vide its order dated 03.10.2016, had quashed the earlier Adjudication Order (herein after referred to as "AO Order") with a liberty to the SEBI to issue fresh Show Cause Notice to the appellants, if deemed fit, and adjudicate the matter in accordance with law.



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## **Brief Background of the matter**

2. It had come to notice of SEBI while examining the shareholding pattern filed by **M/s Orosil Smiths India Ltd. (Formerly known as Silver Smith India Ltd.)** (herein after referred as '**the Company/ Orosil**') with the Bombay Stock Exchange (BSE) that the acquisition of shares by certain promoters v/z. **Mr. B. K. Narula (HUF), Ms. Sidhi Narula, Ms. Ridhi Narula** and **M/s. Solar Renewable Urja Pvt. Ltd.** (herein after collectively referred to as the '**Noticees**') were beyond the threshold limit prescribed under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "the SAST Regulations"). It was also observed that the shareholding of promoter group of the Company increased from 67.79% in December 2009 to 69.89% in September 2010.
3. Based on the details available on the BSE's website, it was noticed that the promoter Noticees viz. **Ms. Sidhi Narula, Ms. Ridhi Narula, Mr. B. K. Narula (HUF) and M/s. Solar Renewable Urja Pvt. Ltd.** had failed to make disclosures under Regulation 7 (1A) read with 7 (2) of the SAST Regulations to the company and to BSE where shares of the Company were listed, within 2 days of such purchase of shares.
4. SEBI, therefore, initiated adjudicating proceedings under the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") to inquire into and adjudge under section 15A (b) of the SEBI Act, the aforementioned alleged violations of the provisions of regulations 7(1A) read with 7(2) of the SAST Regulations, committed by the Noticees.
5. The undersigned was appointed as Adjudicating Officer vide SEBI Whole Time Member order dated December 09, 2014. Vide Adjudicating order

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dated 08.09.2015, all the Noticees were observed to be guilty of contravening the said regulation and a penalty of Rs.20,00,000/- (Rs. twenty lakhs only), which was to be paid jointly and severally by all the Noticees.

6. Hon'ble SAT vide its order dated 03.10.2016, had quashed the above referred AO Order with a liberty to the SEBI to issue fresh SCN to the appellants, if deemed fit, and adjudicate the matter in accordance with law.

**Proceedings in the matter:**

7. A fresh Show Cause Notice dated August 14, 2017 was issued to the Noticees under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty not be imposed against them under section 15A (b) of the SEBI Act for the alleged violations specified in the SCN and the same was duly served to all the Noticees. The Noticees vide common letter dated nil, received on September 20, 2017, submitted a common reply to the SCN issued. The Noticees also requested for personal hearings vide their reply referred above.
8. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, the Noticees were granted an opportunity of personal hearing on October 12, 2017 at SEBI, New Delhi. The Noticee, Mr. Bhushan Kumar Narula, along with advocate Mohd. Azeem, on behalf of all the Noticees appeared before the Adjudicating Officer.
9. During the hearing, the Authorized Representative (AR) of the Noticees reiterated the submissions made by the Noticees vide their above

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mentioned letter. It was also submitted that in the same matter they had already made an open offer in accordance with the order of SEBI bearing No. WTM/RKA/EFD-DRA-II/44/2015 dated May 13, 2015 in compliance with SEBI (SAST) Regulations, 1997 and completed the open offer to the equity shareholders of the target company on December 18, 2015.

10. Further, the Noticees vide letter dated October 17, 2017 have submitted the details of the open offer as were undertaken to be submitted during hearing.
11. The submissions made by the Noticees vide their aforementioned letters are *inter alia* as under:
  - i. The Noticees denied that the promoters of the company did not disclose the alleged acquisition to the Target Company and stock exchange, as alleged in the SCN. In fact, the promoters of the company made the disclosure of the acquisition from December 2009 to September 2010 to Bombay Stock Exchange under Regulation 13 of SEBI (Prohibition of Insider Trading) Regulations, 1992.
  - ii. The Noticees disputed and denied that there is any cause of action to inquire into and adjudge any alleged violations and non-compliance as they have duly intimated to BSE of the acquisition of shares on each and every occasion and there is no contravention of the Regulations as alleged in SCN.
  - iii. The appointment of the Adjudicating Officer was not necessary as Section 15-I of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating



Officer) Rule, 1995 can be invoked if the promoters or other officials of the company continuously violate the SEBI's Rule/Regulations with malafide intention and manipulate the rules for his own benefit.

- iv. The Noticees submitted that the promoters' shareholding was 67.79% as on December 31, 2009. After the acquisition of shares from December 2009 to September 2010, shareholding increased to 69.89% as on September 30, 2010 which amounts to an increase of 2.10%. The percent which exceed the prescribed requirement of disclosure under Regulation 7(1A) of SAST was only 0.10% and the same has been disclosed to the Target Company and BSE under PIT Regulations.
- v. The Noticees submitted that even though the charges imposed by the Adjudicating Authority are under the law but the promoters of the company have already been penalized vide aforementioned SEBI order dated May 13, 2015. The promoters had already completed the open offer to the equity shareholders of the target company on December 18, 2015 in compliance of SEBI order as per provisions of SAST Regulations 1997.

### **Issues for Consideration**

12. After perusal of the material available on record, I have the following issues for consideration:
- a) *Whether the Noticees have violated provisions of Regulation 7(1A) r/w 7(2) of SAST Regulations, 1997?*
- b) *Whether the Noticees are liable for monetary penalty under Section 15 A (b) of the SEBI Act, 1992?*

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- c) *What quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?*

### **Findings**

13. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

**a) Whether the Noticees have violated provisions of Regulation (1A) r/w 7(2) of SAST Regulations, 1997?**

The provisions of Regulation 7 (1A) and 7 (2) of SAST Regulations, 1997 read as under-

**7(1A)** *Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation 2 of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.*

*[Explanation.—For the purposes of sub-regulations (1) and (1A), the term acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.*

**7 (2)** *the disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days, -*

- a) *The receipt of intimation of allotment of shares; or*
- b) *The acquisition of shares or voting rights, as the case may be.*

- i. I note that the Company, M/s. Orosil Smiths India Ltd., is a listed company on the Bombay Stock Exchange (BSE). The cumulative

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shareholding of the Company has changed in the following manner between December 2009 and September 2010 -

Quarter Ending	% Promoter Shareholding	No. of Shares held	Total Equity capital
December-09	67.79	28,00,626	41,31,600
March-10	67.79	28,00,826	41,31,600
June-10	69.04	28,52,600	41,31,600
September-10	69.89	28,87,524	41,31,600

- ii. It was observed from the details submitted by the Company that the promoter shareholding was at 67.79% on December 2009. After a series of acquisitions and some sales made by the promoters, the cumulative promoter shareholding increased to 69.89% as on September, 2010, from 67.79% as on December 2009. The individual change in the promoter's shareholding subsequent to the acquisitions is as under:

Sl. No.	Name of the promoter	Holding (%) on 31.12.2009	Holding (%) on 30.09.2010	% Change
1.	Mr. B.K. Narula (HUF)	6.10	7.35	1.25
2.	Ms. Sidhi Narula	4.38	4.62	0.24
3.	Ms. Ridhi Narula	4.12	4.36	0.24
4.	M/s. Solar Renewable Urja Pvt. Ltd.	0.00	0.37	0.37
		<b>Total</b>		<b>2.10</b>

Therefore, the total increase in shareholding is 2.10% during the period December 31, 2009 - September 30, 2010. As the Noticees are part of a homogenous group, i.e., the promoter's group which was acting in concert, and the Noticees had made acquisitions, the

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Noticees squarely fall under the second proviso to sub-regulation (2) of Regulation 11 of SAST Regulations, 1997.

- iii. It has been noted from the BSE's website that the Noticees had failed to make disclosure under Regulation 7 (1A) read with 7 (2) of the Takeover Regulations of the Company and Stock Exchanges, where shares of the Company are listed, within two days of such purchase. It is pertinent to mention that the Noticees have made all the necessary disclosures under Regulation 13 of SEBI (PIT) Regulations, which is also admitted by them.
- iv. The Noticees have contended that they had made disclosures about their purchase of shares under Regulations 13 (5) and 13 (6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (PIT Regulations) and that the disclosures of change in shareholding made under PIT Regulations also served the purpose and object of disclosures under Regulation 7(1A) of SAST Regulations, 1997. However, I do not find any merit in the submissions of the Noticees due to the following reasons :-
  - a. The fact that the Noticees had a legal duty of making the disclosures under Regulation 7(1A) of SAST Regulations, 1997 and that such non-disclosure has been made penal, it is clear that the provisions of Regulation 7(1A) of SAST Regulations, 1997 are mandatory in nature and thus the Noticees cannot escape their liability. Further, there is a difference between obligation of disclosure under Regulation 13(3) of PIT Regulations and Regulation 7(1A) of SAST Regulations, 1997 and hence it would be absolutely wrong to conclude that disclosures of change in shareholding made under PIT Regulations also served the purpose



and object of disclosures under Regulation 7(1A) of SAST Regulations, 1997.

- b. It is pertinent to mention that as per Regulations 13 (4) and 13 (6) of PIT Regulations, the disclosure is to be made to the company which in turn is obligated to make the disclosure on the stock exchanges, whereas a reading of Regulation 7(1A) r/w 7(2) of SAST Regulations, 1997 makes it abundantly clear that the disclosure is also to be made to the stock exchanges directly. The sole purpose of such an obligation is, therefore, unequivocally to bring more transparency by dissemination of complete information to the investors at large by the individual buyer/seller of shares as well without any delay.
- c. In the instant case, all the Noticees had purchased shares representing more than two per cent of the share capital of the Target Company, they should have made disclosures under Regulation 7(1A) of SAST Regulations, 1997 within 2 days. However, I find that no disclosures as stipulated under the aforementioned regulations was made by the Noticees.
- d. Further, the open offer that was made in accordance with the directions issued by SEBI order dated May 13, 2015 is a measure in the interest of minority shareholders and was triggered due to acquisition of shares beyond a certain percentage as per SAST Regulations which the company didn't announce and then SEBI had to pass an order directing the company to do so. The instant proceedings are different in the sense that the promoters / Noticees were under obligation to disclose their acquisition beyond certain percentage, which they didn't comply. Thus, both the proceedings are mutually exclusive and are not affected by each

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other. Therefore, any such directions to make public announcement for acquiring the shares of the target company cannot be taken as a ground to escape their liability of non-disclosure.

In view of the aforesaid discussions, I hold that the Noticees have violated the provisions of Regulation 7(1A) r/w 7(2) of SAST Regulations, 1997.

**b) Whether the Noticees are liable for monetary penalty under Section 15 A (b) of the SEBI Act, 1992?**

The provisions of Section 15A (b) of the SEBI Act, 1992 read as under:

**SEBI Act 15A - "Penalty for failure to furnish information, return, etc. -**

*If any person, who is required under this Act or any rules or regulations made there under-*

**(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 a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less".*

As already observed, the Noticees violated the provisions of Regulation 7(1A) r/w 7(2) of SAST Regulations, 1997. Therefore, I find that the Noticees are liable for monetary penalty under Section 15A (b) of the SEBI Act, 1992.

**c) What quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?**

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While determining the quantum of penalty, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

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

While adjudging quantum of penalty, 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.”*
- i. From the material available on record, disproportionate gains or unfair advantage accrued to the Noticees or the losses suffered by the investors, are not quantifiable. Further, the Noticees have already given an open offer to the shareholders of the Target Company and have completed it as on December 18, 2015. Therefore, increase in the shareholdings of the Noticees, by virtue of the impugned acquisition has come in the public domain. Noticees have also submitted that for the same acquisitions they had made the disclosures required under SEBI (PIT) Regulations. Such disclosures made under PIT Regulations may not be treated as substitute for disclosures under SAST Regulations, however, if made, such disclosures shows bonafides of the party.
- ii. I, further, note that the Noticees are not only the acquirers but are also the Promoters of a listed company and thus had a responsibility ensuring compliance with the disclosure norms under the SAST



Regulations, 1997 when the cumulative promoter shareholding increased to 69.89% as on September 30, 2010 from 67.79% as on December 2009. Thus by not making the required disclosures the Noticees had deprived the investors of important information at the relevant time.

### **Order**

14. After taking into consideration all the facts and circumstances of the case and considering the mitigating factors as above, I, in exercise of the powers conferred upon me under section 15- I (2) of the SEBI Act, impose the following penalty on the Noticees in terms of section 15A(b) of the SEBI Act:

<b>Name of the Entity</b>	<b>Penalty for violation of 7 (1A) read with 7 (2) of SAST Regulations 1997.</b>
Mr. B. K. Narula (HUF)	Rs. 4,00,000/-  Noticees Nos. 1 to 4 shall pay the penalty jointly and severally.
Ms. Sidhi Narula	
Ms. Ridhi Narula	
M/s Solar Renewable Urja Pvt. Ltd.	

15. The Noticees shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI Penalties Remittable to Government of India", payable at Mumbai OR through e-payment facility into Bank account, the details of which are given below :-



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**Account No. of remittance of penalty levied by Adjudication Officer**

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI - Penalties Remittable to Government of India
Beneficiary A/c No.	31465271959

The said demand draft shall be forwarded to the Deputy General Manager, Recovery Division, Securities and Exchange Board of India, Northern Regional Office, 5th Floor, Bank of Baroda Building, 16, Sansad Marg, New Delhi-110001. In case of e-payment, the details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/2017/42 dated May 16, 2016 and details of such payment shall be intimated at e-mail id - [tad@sebi.gov.in](mailto:tad@sebi.gov.in) under intimation to the undersigned at [mohammada@sebi.gov.in](mailto:mohammada@sebi.gov.in) :

Date	
Department of SEBI	
Name of Intermediary/Other Entities	
Type of Intermediary	
SEBI Registration Number, if any	
PAN	
Amount in INR	
Purpose of payment (including the period for which payment was made e.g. quarterly, annually)	
Bank name and Account Number from which payment is remitted	
UTR No.	

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16. In terms of Rule 6 of the Rules, copies of this order are sent to Noticees, Mr. B.K. Narula, HUF, Ms. Sidhi Narula, Ms. Ridhi Narula and M/s. Solar Renewable Urja Pvt. Ltd.

**Date: December 8, 2017**  
**Place: New Delhi**



**Mohammad Atif Alvi**  
**Adjudicating Officer**

मोहम्मद आतिफ अलवी/Mohammad Atif Alvi  
उप महाप्रबंधक/Dy. General Manager  
भारतीय प्रतिभूति और विनियम बोर्ड  
Securities and Exchange Board of India  
उ. प्रादेशिक कार्यालय/N. Regional Office  
नई दिल्ली/New Delhi

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