BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/MC/VS/2020-21/8153-8156]

UNDER SECTION 15-I (2) 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 –

1) **Raju Tandon** [DIN: 01637206] having address at No. 239 B, Street No. 14, Balbir Nagar, Shahdara, New Delhi – 110 032

2) **Sanjeet Kumar Singh** [DIN: 01633403] having address at 1003, Siddhi Grandeur, Plot No. 84, Sector 19, Kharghar, Navi Mumbai – 410 210 (Maharashtra)

3) **Sanjiv Kumar Jain** [DIN: 00903577] 18, Hans Niwas, Flat No. 6, Saket Block, Main Road, Mandawali, New Delhi – 110 092

4) **Pawan Kumar** [DIN: 02186345] 134A, 1st Floor, Somdutt Chamber – 1, 5, Bhikaji Kama Place, New Delhi – 110 066

in the matter of Orissa Sponge Iron & Steel Pvt. Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") carried out investigation in the matter of acquisition of shares in Orissa Sponge Iron & Steel Limited (hereinafter be referred to as, the "***OSISL***") wherein information was sought regarding Multistar Construction Pvt. Ltd. ("Multistar"), Matchless Infrastructure Private Limited ("Matchless"), BNS Tour & Travel Private Limited ("BNSTTPL"), Brightsun Merchants Private Limited ("Brightsun") and Ultra Modern Exports Private Limited ("Ultra Modern") on their relationship with Bhushan Energy Ltd (hereinafter be referred to as, "***BEL***").

2. Pursuant to investigation, SEBI initiated adjudication proceedings under Section 15A (a) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") against Raju Tandon, Sanjeet Kumar Singh, Sanjiv Jain and Pawan Kumar (hereinafter referred to as Noticee No. 1, 2, 3 and to 4), the directors of Multistar, Matchless, BNSTTPL & Brightsun and Ultra Modern, for alleged violation of Sections 11 (2) and 11C (3) of the SEBI Act read with Section 11C(2) of the SEBI Act for failure to furnish information sought in SEBI summons issued to them.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as "**AO**") under Section 15-I of the SEBI Act, 1992 ("**SEBI Act**") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**"), vide order dated February 12, 2019, to inquire into, and adjudge under Section 15A (a) of the SEBI Act the aforesaid alleged violations.

4. The appointment of the undersigned as AO was communicated vide order dated February 22, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notices No. EAD/EAD5/MC/CB/2019/18365, EAD/EAD5/MC/CB/2019/18367, EAD/EAD5/MC/CB/2019/18369 and EAD/EAD5/MC/CB/2019/18373 dated July 19, 2019 (hereinafter referred to as "**SCN 1", "SCN2", "SCN3"** and **"SCN4"** and together referred to as **"the SCNs**"), were issued to the Noticee Nos. 1 to 4, respectively, in terms of Rule 4 (1) of the Adjudication Rules read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticees in terms of Section 15A (a) of the SEBI Act, for the aforesaid alleged violations.

6. The allegations levelled against the Noticee Nos. 1 , 2 , 3 and 4 in the SCNs are summarized as follows:-

a) During the investigation, the Investigation Authority (hereinafter be referred to as, the "***IA***") served summons bearing number IVD/ID6/OW/P/2016/30729/9 dated November 09, 2016 under Section 11(2) and 11(3) of the SEBI Act upon the Noticee No. 1 by way of speed post as well as e-mail to compel production of details relating to date of purchase of shares & number of shares purchased in the scrip of OSISL, consideration paid to effect such purchase and source of such consideration. The Noticee No. 1 was also asked to provide copy of bank statements duly attested by bank, showing payment of consideration for purchase of 9,99,900 shares of OSISL, which it was holding as on June 30, 2014 and source of such consideration. The Noticee No. 1 was directed to submit required details by November 17, 2016.

b) The IA served summons bearing number IVD/ID6/OW/P/2016/30729/7 dated November 09, 2016 under Section 11(2) and 11C (3) of the SEBI Act upon the Noticee No. 2 by way of speed post as well as e-mail to compel production of details relating to date of purchase of shares & number of shares purchased in the scrip of OSISL, consideration paid to effect such purchase and source of such consideration. The Noticee No. 2 was also asked to provide copy of bank statements duly attested by bank, showing payment of consideration for purchase of 8,03,298 shares of OSISL, which it was holding as on June 30, 2014 and source of such consideration. The Noticee No. 2 was directed to submit required details by November 17, 2016.

c) The IA served summonses bearing number IVD/ID6/OW/P/2016/30729/3-4 and IVD/ID6/OW/P/2016/30729/5-6 dated November 09, 2016 under Section 11(2) and 11C (3) of the SEBI Act upon the Noticee No. 3 (in his capacity as Director of BNS Tour and Brightsun respectively) by way of speed post as well as e-mail to compel production of details relating to date of purchase of shares & number of shares purchased in the scrip of OSISL, consideration paid to effect such purchase and source of such consideration. The Noticee No. 3 was also asked to provide copy of bank statements duly attested by bank, showing payment of consideration for purchase of 5,13,951 shares of OSISL by BNS Tour and 6,47,936 shares of OSISL by Brightsun, which they were holding as on June 30, 2014 and source of such consideration. The Noticee No. 3 was directed to submit required details by November 17, 2016.

d) The IA served summons bearing number IVD/ID6/OW/P/2016/30729/12 dated November 09, 2016 under Section 11(2) and 11C (3) of the SEBI Act upon the Noticee by way of speed post as well as e-mail to compel production of details relating to date of purchase of shares & number of shares purchased in the scrip of OSISL, consideration paid to effect such purchase and source of such consideration. The Noticee was also asked to provide copy of bank statements duly attested by bank, showing payment of consideration for purchase of 9,99,900 shares of OSISL, which it was holding as on June 30, 2014 and source of such consideration. The Noticee was directed to submit required details by November 17, 2016.

Noticee No.1

e) Noticee No. 1 in its response *vide* e-mail dated November 17, 2016 towards the summons dated November 09, 2016, sought an extension of 4 weeks for submitting all details. *Vide* e-mail dated November 21, 2016, the said Noticee was informed that his request was acceded to and the Noticee was directed to submit all details sought through summons dated November 09, 2016 by December 05, 2016.

f) In his response to e-mail dated November 21, 2016, the Noticee *vide* letter dated December 02, 2015 requested the Investigating Authority to grant a further extension of minimum 4 weeks. In response to his letter dated December 03, 2015, the Noticee was informed *vide* e-mail dated December 08, 2016 that considerable time to supply information sought through summons dated November 09, 2016 had already been provided to him and the Noticee was advised to submit information sought by December 16, 2016.

g) In his letter dated December 15, 2016, the Noticee *inter alia* submitted that "*There is no change in our holding (999900) in Orissa Sponge Iron & Steel Limited. It is the same today as was in 2008-2009."* The Noticee also submitted that "*The documents asked for are too old and not traceable therefore we have requested our Bank to give us Bank Statements. The Bank is not giving us Statement as there are busy in handling demonetization therefore more time is required to obtain the Bank Statements*" Thereafter, *vide* e-mail dated December 20, 2016, the Noticee was advised to provide complete details of

bank/s, i.e. name of the bank/s and branch/es, including account number to which the Noticee had made request to provide statements. The Noticee was advised to provide the information sought by December 21, 2016. However, it is observed that no information was supplied by the Noticee.

h) Thereafter, *vide* Summons IVD/ID6/OW/P/2017/12990/5 dated June 07, 2017 issued by the Investigating Authority, which was served upon the Noticee by way of e-mail June 07, 2017, the Noticee was advised to provide details relating to date of purchase of shares, number of shares purchased, consideration paid and source of such consideration by June 16, 2017. The Noticee was also advised to provide copy of bank statement duly attested by bank, showing payment of consideration for purchase of 9,99,900 shares of OSISL by June 16, 2017. The Noticee was also informed that any omission to produce desired information may lead to initiation of prosecution / adjudication proceedings against it under relevant provisions of the SEBI Act.

i) However, it is observed that the Noticee failed to provide information sought by the Investigating Authority by way of summons issued under Section 11C (2) and 11C (3) of the SEBI Act. Therefore, it was alleged that the omission of Noticee to provide information sought by Investigating Authority is in violation of Section 11C (2) and 11C(3) of the SEBI Act.

Noticee No. 2

j) During the investigation, the Investigation Authority (hereinafter be referred to as, the "***IA***") served summons bearing number IVD/ID6/OW/P/2016/30729/7 dated November 09, 2016 under Section 11(2) and 11C(3) of the SEBI Act upon the Noticee No. 2 by way of speed post as well as e-mail to compel production of details relating to date of purchase of shares & number of shares purchased in the scrip of OSISL, consideration paid to effect such purchase and source of such consideration. The said Noticee was also asked to provide copy of bank statements duly attested by bank, showing payment of consideration for purchase of 8,03,298 shares of OSISL, which it was holding as on June 30, 2014 and source of such consideration. The Noticee was directed to submit required details by November 17, 2016.

k) Noticee in its response *vide* e-mail dated November 17, 2016 towards the summons dated November 09, 2016, sought an extension of 20 days for submitting all details. *Vide* e-mail dated November 21, 2016, the Noticee was informed that his request was acceded to and the Noticee was directed to submit all details sought through summons dated November 09, 2016 by December 05, 2016.

l) In his response to e-mail dated November 21, 2016, the Noticee No. 2 *vide* letter dated December 03, 2015 requested the Investigating Authority to grant a further extension of minimum 30 days. In response to his letter dated December 03, 2015, the Noticee was informed *vide* e-mail dated December 08, 2016 that considerable time to supply information sought through summons dated November 09, 2016 had already been provided to him and the Noticee was advised to submit information sought by December 16, 2016.

m) In his letter dated December 15, 2016, the Noticee No. 2 *inter alia* submitted that "*There is no change in our shareholding in Orissa Sponge Iron & Steel Ltd. which remain the same i.e. 803298 as was in 2009."* The Noticee also submitted that "*The Bank statements are not traceable in our record. Our bank also shows its inability to provide the same being the demonetization (sic.) problem*" Thereafter, *vide* e-mail dated December 20, 2016, the Noticee was advised to provide complete details of bank/s, i.e. name of the bank/s and branch/es, including account number to which the Noticee had made request to provide statements. The said Noticee was advised to provide the information sought by December 21, 2016.

n) Vide Summons dated June 07, 2017 issued by the Investigating Authority, which was served upon the Noticee No. 2 by way of e-mail dated June 07, 2017, the Noticee was advised to provide details relating to date of purchase of shares, number of shares purchased, consideration paid and source of such consideration by June 16, 2017. The Noticee was also advised to provide copy of bank statement duly attested by bank, showing payment of consideration for purchase of 8,03,298 shares of OSISL by June 16, 2017. The Noticee was also informed that any omission to produce desired information may lead to initiation of prosecution / adjudication proceedings against it under relevant provisions of

the SEBI Act. However, it was observed that the required information was not supplied by the Noticee No. 2.

o) The Noticee failed to provide information sought by the Investigating Authority by way of summons issued under Section 11C (2) and 11C (3) of the SEBI Act. Therefore, it was alleged that the omission of Noticee to provide information sought by Investigating Authority is in violation of Section 11C (2) and 11C(3) of the SEBI Act.

Noticee No. 3

p) During the investigation, the Investigating Authority (hereinafter be referred to as, the "***IA***") served summonses bearing number IVD/ID6/OW/P/2016/30729/3-4 and IVD/ID6/OW/P/2016/30729/5-6 dated November 09, 2016 under Section 11(2) and 11(3) of the SEBI Act upon the Noticee No. 3 (in his capacity as Director of BNS Tour and Brightsun respectively) by way of speed post as well as e-mail to compel production of details relating to date of purchase of shares & number of shares purchased in the scrip of OSISL, consideration paid to effect such purchase and source of such consideration. The Noticee No. 3 was also asked to provide copy of bank statements duly attested by bank, showing payment of consideration for purchase of 5,13,951 shares of OSISL by BNS Tour and 6,47,936 shares of OSISL by Brightsun, which they were holding as on June 30, 2014 and source of such consideration. The Noticee No. 3 was directed to submit required details by November 17, 2016.

q) Brightsun in its response *vide* e-mail dated November 19, 2016 towards the summons dated November 09, 2016, sought an extension of 4 weeks for submitting required details. *Vide* e-mail dated November 21, 2016, the Noticee No. 3 was informed that his request was acceded to and the Noticee was directed to submit all details sought through summons dated November 09, 2016 by December 05, 2016.

r) In its response to e-mail dated November 21, 2016, Brightsun *vide* letter dated December 03, 2016 requested the Investigating Authority to grant a further extension of four weeks. In response to his letter dated December 03, 2016, Brightsun was informed *vide* e-mail dated December 08, 2016 that considerable time to supply information sought through summons dated November 09, 2016

had already been provided to him and Brightsun was advised to submit information sought by December 16, 2016.

s) In its letter dated December 14, 2016, Brightsun *inter alia* submitted that "*We acquired 6,47,954 shares of Orissa Sponge Iron & Steel Limited in the year 2010-11 and continuously hold the same. There is no change in our holding."* The Noticee also submitted that "*We have requested the Bank to provide us Bank Statements as the same is not traceable with us. We are unable to arrange the same as the Bank is busy in handling the demonetization problem*" Thereafter, *vide* e-mail dated December 20, 2016, Brightsun was advised to provide complete details of bank/s, i.e. name of the bank/s and branch/es, including account number to which the Noticee had made request to provide statements. Brightsun was advised to provide the information sought by December 21, 2016.

t) Thereafter, *vide* Summons dated June 07, 2017 issued by the IA, which was served upon the Noticee No. 3 (in his capacity as Director of Brightsun) by way of e-mail dated June 07, 2017, Noticee No. 3 was advised to provide details relating to date of purchase of shares, number of shares purchased, consideration paid and source of such consideration by June 16, 2017. The Noticee was also advised to provide copy of bank statement duly attested by bank, showing payment of consideration for purchase of 6,47,936 shares of OSISL by June 16, 2017. The Noticee was also informed that any omission to produce desired information may lead to initiation of prosecution / adjudication proceedings against it under relevant provisions of the SEBI Act. However, it was observed that the Noticee did not supply the information required by way of aforesaid summons.

u) On non-receipt of any response towards the summons dated November 09, 2016 by BNS Tour, summons dated December 09, 2016 (copy of which is enclosed herewith as, ***Annexure 7***) was served upon the Noticee No. 3 in his capacity as Director of BNS Tour, to compel production of details relating to date of purchase of shares & number of shares purchased in the scrip of OSISL, consideration paid to effect such purchase and source of such consideration. The Noticee No. 3 was also asked to provide copy of bank statements duly

attested by bank, showing payment of consideration for purchase of 5,13,951 shares of OSISL by BNS Tour by December 19, 2016.

v) BNS Tour, *vide* letter dated December 22, 2016 sought extension of 30 days to submit information required by way of summons dated December 09, 2016. However, the details sought from BNS Tour were not provided by it / the Noticee No. 3 on expiry of the extension sought.

w) After lapse of considerable amount of time, summons dated June 07, 2017 was served upon the Noticee No. 3 requiring him to provide details relating to date of purchase of shares, number of shares purchased, consideration paid and source of such consideration by June 16, 2017. The Noticee No. 3 was also advised to provide copy of bank statement duly attested by bank, showing payment of consideration for purchase of 5,13,951 shares of OSISL by June 16, 2017. The Noticee No. 3 was also informed that any omission to produce desired information may lead to initiation of prosecution / adjudication proceedings against it under relevant provisions of the SEBI Act. However, the details sought from BNS Tour were not provided by it / the Noticee No. 3 on expiry of the extension sought.

x) Hence it was observed that the Noticee No. 3 failed to provide information sought by the Investigating Authority by way of summons issued under Section 11C (2) and 11C (3) of the SEBI Act.

Noticee No. 4

y) The Investigation Authority (hereinafter be referred to as, the "***IA***") served summons bearing number IVD/ID6/OW/P/2016/30729/12 dated November 09, 2016 under Section 11(2) and 11C(3) of the SEBI Act upon the Noticee No. 4 by way of speed post as well as e-mail to compel production of details relating to date of purchase of shares & number of shares purchased in the scrip of OSISL, consideration paid to effect such purchase and source of such consideration. The Noticee No. 4 was also asked to provide copy of bank statements duly attested by bank, showing payment of consideration for purchase of 9,99,900 shares of OSISL, which it was holding as on June 30, 2014 and source of such consideration. The Noticee No. 4 was directed to submit required details by November 17, 2016.

z) Noticee No. 4 in its response *vide* e-mail dated November 17, 2016 towards the summons dated November 09, 2016, sought an extension of 3 weeks for submitting all details. No. 4.

aa) In his response to e-mail dated November 21, 2016, the Noticee No. 4 *vide* letter dated December 02, 2015 requested the Investigating Authority to grant a further extension of 4 weeks. In response to his letter dated December 03, 2015, the Noticee No. 4 was informed *vide* e-mail dated December 08, 2016 that considerable time to supply information sought through summons dated November 09, 2016 had already been provided to him and the Noticee No. 4 was advised to submit information sought by December 16, 2016.

bb) In his letter dated December 15, 2016, the Noticee No. 4 *inter alia* submitted that "*In Orissa Sponge Iron & Steel Ltd. till date we hold 999900 equity shares as in 2008-09. No change in our shareholding. On receipt of letter from SEBI detailed information of our shareholding in Orissa Sponge Iron & Steel Ltd. was submitted with SEBI office Calcutta vide letter dated 29-06-2009 (copy attached).*" The Noticee No. 4 also submitted that "*Because required information is too old and Bank Statements* " Thereafter, *vide* e-mail dated December 20, 2016, the Noticee No. 4 was advised to provide complete details of bank/s, i.e. name of the bank/s and branch/es, including account number to which the Noticee No. 4 had made request to provide statements. The Noticee No. 4 was advised to provide the information sought by December 21, 2016. However, it was observed that the required information was not supplied by the Noticee.

cc) Thereafter, *vide* Summons IVD/ID6/OW/P/2017/12990/6 dated June 07, 2017 issued by the Investigating Authority, which was served upon the Noticee No. 4 by way of e-mail dated June 07, 2017 the Noticee No. 4 was advised to provide details relating to date of purchase of shares, number of shares purchased, consideration paid and source of such consideration by June 16, 2017. The Noticee No. 4 was also advised to provide copy of bank statement duly attested by bank, showing payment of consideration for purchase of 9,99,900 shares of OSISL by June 16, 2017. The Noticee No. 4 was also informed that any omission to produce desired information may lead to initiation of prosecution / adjudication proceedings against it under relevant provisions of the SEBI Act.

dd) However, it was observed that the Noticee failed to provide information sought by the Investigating Authority by way of summons issued under Section 11C (2) and 11C (3) of the SEBI Act.

7. The Noticees were granted a period of 14 days from the date of receipt of notice by them, to submit a reply to the SCN, if any.

8. The respective SCNs were served upon Noticee Nos. 1, 3 and 4 by affixture on January 23, 2020 in terms of Rule 7 (c) of the Adjudication Rules, while the SCN was served upon Noticee No. 2 by newspaper publication in the Hindustan Times (English edition, Mumbai), Nav Bharat (Hindi edition, Mumbai) and Maharashtra Times (Marathi edition, Mumbai) on March 2, 2020 as per Rule 7 (d) of the Adjudication Rules. However no response was received from the Noticees to the SCNs.

9. Subsequently, Hearing Notice Nos. SEBI/EAD5/MC/VS/2020/6004, SEBI/EAD5/MC/VS/2020/6011 and SEBI/EAD5/MC/VS/2020/6002 dated February 14, 2020 to Noticees No. 1, 3 and 4 respectively, were served upon them by affixture on February 22, 2020 in terms of Rule 7 (c) of the Adjudication Rules, granting them opportunity of hearing on March 17 and 18, 2020. Hearing Notice No. SEBI/EAD5/MC/VS/2020/6007 dated February 17, 2020 granting an opportunity of personal hearing on March 18, 2020 was served upon Noticee No. 2 vide newspaper publication on March 2, 2020.

10. The Noticees have not responded to the SCN or the Hearing Notice and did not appear for hearing on the scheduled dates.

11. I am of the view that sufficient efforts have been made to serve the Noticees with the SCN and opportunities have been provided for making submissions. Accordingly, I am satisfied that principles of natural justice have been complied with.

12. In view of the above, I now proceed to decide the case *ex parte* on merits, on the basis of the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

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

I. Whether the provisions of Sections 11 (2) and 11C (3) of the SEBI Act read with Section 11C(2) of the SEBI Act were violated on account of failure to furnish information sought in SEBI summons issued to them?

II. If yes, whether the Noticees are liable for imposition of monetary penalty under Section 15A(a) of the SEBI Act?

III. If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15 J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

ISSUE I. Whether the provisions of Sections 11 (2) and 11C (3) of the SEBI Act read with Section 11C(2) of the SEBI Act were violated on account of failure to furnish information sought in SEBI summons issued to them

14. As per the SCN, the Noticees No 1-4 failed to comply with summons issued to them under Sections 11 (2), 11C (2) and 11C (3) of the SEBI Act to seek information regarding details relating to date of purchase of shares & number of shares purchased in the scrip of OSISL, consideration paid to effect such purchase and the source of such consideration. The Noticees were also asked to provide copy of bank statements duly attested by bank, showing payment of consideration for purchase of the respective quantities of shares of OSISL held by them as on June 30, 2014 and source of such consideration.

15. I note that the SCN had been served upon all the Noticees, and after seeking repeated extensions of time for making detailed submissions, each of them stated that there had been no change in their shareholding since the time of the investigation and they continued to hold the same number of shares as in 2008-9. Each of the Noticees also submitted that they were unable to get details of relevant bank statements as sought, because the statements were either too old or the bank

was busy in handling demonetisation and therefore needed more time to provide the statements. Despite subsequent e-mails dated 09.11.2016 and 20.12.2016 to the respective Noticees seeking complete details of bank/s, i.e. name of the bank/s and branch/es, including account number to which the Noticee had made request to provide statements, the Noticees did not submit the said information.

16. Accordingly, summons dated 07.06.2017 was issued by SEBI to each of the Noticees requiring submissions of the aforementioned details and stating that omission to produce desired information may lead to initiation of prosecution / adjudication proceedings against it under relevant provisions of the SEBI Act. However, it is observed that the required information was not supplied by any of the Noticees.

17. Section 11 (2) (i) of the SEBI Act *inter alia* empowers SEBI to call for information and records relevant to any investigation or inquiry being conducted by SEBI from any person associated with the securities market.

18. Further, the provisions of Section 11C (2) and (3) of the SEBI Act stipulate as follows:-

SEBI Act

"Investigation.

11C. *…*

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information

to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation."

19. In view of the express provisions of law, SEBI was empowered to seek information from the Noticees as directors of companies which were being investigated in relation to acquisition of shares of OSISL under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

20. It is evident from the material on record that the SCNs had been served upon the respective Noticees and they even submitted their response stating that their shareholding in OSISL remained unchanged since 2008-9, and that they was unable to obtain bank statements due to banks being busy with demonetisation. However, when SEBI sought from the Noticees the evidence that the Noticees had tried to obtain the bank statements from the banks, the Noticees did not submit any reply. The Noticees even failed to inform their bank account numbers, bank and branch names, for which no information from a bank was required to be sourced.

21. As per Section 11C (2) of the SEBI Act, it is the duty of every officer of a company "*to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power*".

22. While the respective initial responses of the Noticees to the letters seeking information from them regarding their acquisition of shares of OSISL gave information regarding number of shares held and the fact that there had been no change in their shareholding, details regarding source of funds for purchase of shares of OSISL were not submitted by the Noticees ostensibly because they did not have access to the said details.

23. While a person from whom information is sought under S. 11C (2) of the SEBI Act is only bound to provide information which is in its custody or power, the information sought like bank account numbers, source of funds etc., was in the possession of the Noticees. Other information like bank statements was expected to be in their possession or was in their power to obtain with reasonable effort. However, there is no evidence that such effort had been made by them to obtain the information, or to submit the information available with them such as source of funds for acquisition of shares during the relevant period.

24. Further, the absence of relevant information sought from the Noticees hampered investigation as the source of funding for purchase of OSISL shares by BNS Tour could not be traced to the extent of 20% of the funds, thus leading to a gap in relevant information regarding the connection between the persons alleged to be acting in concert for acquisition of shares of OSISL during the investigation period.

25. In view of the above, I find that the Noticee Nos 1, 2, 3 and 4, by failing to furnish the information sought in the SEBI summons, violated Sections 11C (2) read with Section 11C (3) and 11 (2) of the SEBI Act. Therefore, I find that the allegation regarding contravention of Sections 11C (2) read with Section 11C (3) and 11 (2) of the SEBI Act, stands established *vis a vis* the Noticees.

ISSUE II. If yes, whether the Noticees are liable for imposition of monetary penalty under Section 15A(a) of the SEBI Act?

ISSUE III. If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15 J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

26. As it has been established that the Noticees failed to comply with Sections 11C (2) read with 11C (3) and Section 11 (2) of the SEBI Act, the Noticees are liable for payment of monetary penalty in terms of Section 15A (a) of the SEBI Act.

27. Text of the relevant provision is reproduced below for reference:-

SEBI Act

*"**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,—*

(a) to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty 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.

……

9. While determining the quantum of penalty under Section 15A (a) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:-

SEBI Act

"15J. Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under Section 15-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."

28. In this case, the extent of disproportionate gain or unfair advantage or loss caused to investors cannot be quantified. There is material on record to indicate that the nature of default is repetitive. I note that absence of information from the Noticees did impede the investigation process.

29. Therefore, taking into account the aforesaid factors, and considering the facts and circumstances of the case, I am of the view that a penalty of Rs. 1,00,000/- levied on each of the Noticees will be commensurate with the violations committed by the respective Noticees.

ORDER

30. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty upon the Noticee Nos. 1-4 as shown in the table below:-

Name of the Noticee	Penalty Provisions and Violations	Penalty Amount
Raju Tandon	Under Section 15A (a) of the SEBI Act for violation of Sections 11C(3) and 11C (2) read with Section 11 (2) of the SEBI Act, 1992	Rs.1,00,000/- (Rupees One Lakh only)
Sanjeet Kumar Singh	Under Section 15A (a) of the SEBI Act for violation of Sections 11C(3) and 11C (2) read with Section 11 (2) of the SEBI Act, 1992	Rs.1,00,000/- (Rupees One Lakh only)
Sanjiv Kumar Jain	Under Section 15A (a) of the SEBI Act for violation of Sections 11C(3) and 11C (2) read with Section 11 (2) of the SEBI Act, 1992	Rs.1,00,000/- (Rupees One Lakh only)
Pawan Kumar	Under Section 15A (a) of the SEBI Act for violation of Sections 11C(3) and 11C (2) read with Section 11 (2) of the SEBI Act, 1992	Rs.1,00,000/- (Rupees One Lakh only)

38. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online

payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

39. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department of SEBI. The Noticees shall provide the following details while forwarding DD/ payment information:
    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

40. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: JUNE 30, 2020
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER