

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: ORDER/PM/RR/2020-21/7744)

**UNDER SECTION 15 - I OF THE 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:
National Highway Authority of India
PAN: AAATN1963H

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an examination in the matter of National Highway Authority of India (hereinafter referred to as "the Company") from financial year 2015-16 to financial year 2018-19 (hereinafter referred to as "examination period") and the possible violation of Regulation 52(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "LODR Regulations") by National Highway Authority of India (hereinafter referred to as "Noticee/NHAI").

APPOINTMENT OF ADJUDICATING OFFICER

2. I have been appointed as the Adjudicating Officer, vide Order dated January 3, 2020 and communicated vide communique dated January 9, 2020 under Section 15-I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under the provisions of Sections 15A(b) of the SEBI Act for the alleged violation of Regulation 52(1) of the LODR Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice (hereinafter referred to as 'SCN') was served by the undersigned on the Noticee vide SCN dated January 15, 2020 at its latest address available on record. The SCN was issued to the Noticee under the provisions of Rule 4 (1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticee and why penalty should not be imposed on the Noticee under the provisions of Sections 15A (b) of the SEBI Act, for the aforesaid alleged violations.
4. Following are the observations and allegations made in the SCN:
- a) SEBI received a request from the Noticee seeking extension for filing of unaudited half-yearly financial results for the year ended March 31, 2019.
 - b) Pursuant to the aforesaid request of extension, SEBI sought information from Exchanges regarding the compliance status of Noticee with respect to Regulation 52(1) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 from financial year 2015-16 to financial year 2018-19.
 - c) From the information submitted by the Exchanges, it was observed that NHAI was non-compliant with Regulation 52(1) of the LODR Regulations which deals with the submission of half yearly unaudited financial results by the issuer with the exchanges within stipulated time (i.e., 45 days from the end of each half financial year).
 - d) The delay in submission of half yearly financial results by NHAI in terms of number of days is summarized in the table below:

Summary of delay in submission of half yearly financial results by NHAI
(in no. of days)

Financial Year	2015-16		2016-17		2017-18		2018-19	
	First Half *	Second Half	First Half	Second Half	First Half	Second Half	First Half	Second Half
BSE	NA	04	Not Submitted	15	34	12	19	78
NSE	NA	09	09	22	34	29	19	78

** SEBI (LODR) Regulations, 2015 were not applicable as they came into force w.e.f Dec.*

02, 2015.

Note – Delay in submission has been calculated as difference between 45 days from end of half year and the date of first disclosure to any exchange for establishing violation by NHAI.

- e) From the table above, it was observed that from FY 2015-16 to FY 2018-19, NHAI had filed its half yearly financial results with delay in the range of 4 days to 78 days.
 - f) From the material available on record, it was observed that SEBI vide its letter dated September 21, 2018, inter-alia, had advised NHAI for strict compliance with the LODR Regulations in future. Despite the strict advisory by SEBI, NHAI did not submit the financial result of half year ending on September 30, 2018 and March 31, 2019 on time and the same were submitted with a delay of 19 days and 78 days respectively. In view of the aforesaid delays/non-compliance, vide letter dated July 10, 2019, SEBI sought an explanation from NHAI as to why its request for relaxation would be considered despite of the earlier advisory issued to it by SEBI regarding delay in submission of half yearly financial results.
 - g) With regard to above, it was, inter-alia, submitted by NHAI that it has more than 200 accounting units spread across the country. Consolidation of its accounts consists of finalization of individual trials of all units and consolidation thereof. NHAI has further stated that it would make every effort to ensure that its Half Yearly results are submitted to exchanges in time.
 - h) On account of the aforesaid non-compliance, the Noticee was alleged to have violated Regulation 52(1) of the SEBI (LODR) Regulations, 2015.
5. In response to the SCN, the Noticee filed its replies vide letters dated February 11, 2020 and March 23, 2020 which, inter-alia, stated as under:
- a) *In accordance with provisions for quorum of Boar meeting specified under National Highway Authority of India (Transaction of Business Amendment) Regulations, 2001, no meeting of the Noticee Authority shall be considered*

legal and valid unless attended by two third of total Board members and three fourth of the part time Board member.

- b) NHAI seeks the approval of the majority of its Board members in relation to all matters including approval of un-audited half yearly results.*
- c) All efforts have been undertaken in past by the officers and employees of the Noticee Authority to place the unaudited accounts for approval by the board so as to meet the stipulated timelines. However, at times, on account of pre-occupations of the board members, the Noticee Authority could not align with the timelines for seeking its board's concurrence. Since the quorum of any meeting of the board of the Noticee Authority could not have been constituted in absence of its part time board members, it had to invariably seek their convenience to set up and convene its board meetings and to realign with the convenience of other full time board members.*
- d) The Noticee Authority has always earnestly tried to live up with the above referred issues so as to ensure timely regulatory compliances but had to depend upon the confirmations from the respective Ministries (and offices mentioned above) and it absolutely does not have any kind of control over these offices. Instant SCN has been issued to the Noticee Authority alleging and highlighting certain issues which are beyond its reasonable control.*
- e) Placing the results before the entire board members and seeking their approval resulted in unintentional administrative time enlargements.*
- f) Section 27 of the SEBI Act, 1992 provides that where an offence under SEBI Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against accordingly. This mandates the identification of the persons who are at the helm of affairs of the relevant body corporate (who can be said to be the officers in default in common parlance) as a pre-requisite. This mandatory burden of identification has not been discharged in the instant case and the SCN has been issued as a matter of routine procedure casually in the name of the Noticee Authority in deviation with*

the above said charging Section 27 and the instant SCN therefore is bad in the eyes of law.

- g) It is further submitted that the Noticee Authority (being an entity established by the Government of India under specific statute) by has been classified as 'State' within the meaning of Article 12 of the Constitution of India. The board of the Noticee Authority include public servants and therefore issuance of the SCN under reply (in connection with the alleged violations under SEBI Act, 1992 read with the LODR) warranted prior consent from the Central Government as provided under the Code of Criminal Procedure, 1973. The instant SCN infringes with the said statutory immunity and is thus liable to be withdrawn.*
- h) There has been absolutely no gain or advantage experienced by the Noticee Authority, its board, officers or employees in the entire process of collation, approval and publication of the subject half yearly results. Also, there has not been any noticeable price movement in the listed securities of the Noticee Authority in and around the periods when the results were to be submitted / actually submitted. Therefore, the mandate of the Section 15J of SEBI Act has not been contravened by the Noticee Authority.*
- i) We would also like to highlight that the Noticee Authority has always been prompt and forthcoming in discharging its contractual and statutory obligations. the Noticee Authority has always promptly acted to address and resolve investors' (bondholders') grievances.*
- j) The Noticee Authority reiterates that it has put in requisite efforts on every past occasion so that the unaudited accounts are compiled, consolidated and prepared on time. The unaudited accounts for the half years ended September, 2015; March, 2016; September, 2016 and March, 2017 etc were ready much before the expiry of the stipulated 45 days' period.*
- k) Noticee Authority has always sincerely endeavoured to reconcile the provisions of the NHAI Act, 1988 with the LODR and other applicable legal and administrative regime so that any kind of procedural conflicts may be avoided.*
- l) Therefore, kindly withdraw the SCN and drop the adjudication proceedings.*

6. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, vide hearing Notice dated February 17, 2020, the Noticee was granted an opportunity of personal hearing on March 3, 2020 at Securities and Exchange Board of India, 4th Floor, Plot No. C-7, 'G' Block, Bandra- Kurla Complex, Bandra (E), Mumbai- 400 051. On request of Noticee to adjourn the aforesaid hearing, the Noticee was granted second opportunity of personal hearing on March 11, 2020 at the abovementioned address. The said hearing was attended by the Authorised Representative of the Noticee and requested to submit additional reply in the instant matter.
7. Taking into account the aforesaid facts, I am of the view that principle of natural justice has been followed in the matter by granting the Noticee ample opportunities for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and replies submitted by the Noticee.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticee is that the Noticee has violated Regulation 52(1) of the LODR Regulations.

After perusal of the material available on record, I have the following issues for consideration, viz.,

- I. *Whether the Noticee has violated the provisions of Regulation 52(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015?*
- II. *Does the violation, if any, attract monetary penalty under Section 15 A (b) of SEBI Act.?*
- III. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

9. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (LODR) Regulations, 2015, which reads as under:

Financial Results

52. (1) The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the Board within forty five days from the end of the half year to the recognized stock exchange(s).

Issue I: Whether the Noticee has violated the provisions of Regulation 52(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015?

10. The first issue for consideration is whether the Noticee has violated Regulation 52(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

11. Taking into account the requirements of Regulation 52(1) of the SEBI (LODR) Regulations, 2015, replies of the Noticee and reply received from Exchanges, my findings in the instant matter are as under:

a) From the fact of the case, I observe that Noticee sought extension for filing of unaudited half-yearly financial results for the year ended March 31, 2019. Therefore, SEBI sought information from Exchanges (NSE and BSE) regarding the compliance status of Noticee with respect to Regulation 52(1) of LODR Regulations from FY 2015-16 to FY 2018-19. From the submissions of the Exchanges, it was observed that from FY 2015-16 to FY 2018-19, the Noticee had made delayed filings of its half yearly financial results with a delay in the range of 4 days to 78 days.

b) Observing repeated delayed disclosure of half yearly financial results at multiple instances (five instances during 2nd half of FY2015-16, FY2016-17 and FY2017-18), SEBI, vide its letter dated September 21, 2018, had advised the Noticee for strict compliance with the LODR Regulations in future. However, despite the said advisory by SEBI, the Noticee did not

submit the financial result on time with respect to half year ending on September 30, 2018 and March 31, 2019 and the same were submitted with a delay of 19 days and 78 days respectively.

- c) From the above facts, I find that there was repeated failure (seven instances during FY 2015-16 to FY 2018-19) on the part of the Noticee regarding compliance with the provisions of Regulation 52(1) of LODR Regulations.
- d) Noticee, in its reply to SCN has submitted that it seeks approval of the majority of its Board members in relation to all matters including approval of un-audited half yearly results. Due to lack of quorum of Board i.e., due to absence of required part time board members, despite all efforts by the Noticee, it failed to meet the stipulated timelines.

With regard to the above procedural difficulties cited by the Noticee, I understand that a listed entity is required to comply with the relevant Regulations/directions issued by SEBI from time to time. In the instant matter, the provision of said Regulation does not give any relaxation from complying with the same for any procedural challenges. Therefore, I do not accept the contention of the Noticee that any procedural delays can be treated as mitigating factor for the alleged violation by the Noticee.

- e) Noticee has contended that the instant SCN is bad in the eyes of law as the same has been issued as a matter of routine procedure in the name of the Noticee authority in deviation of Section 27 of SEBI Act which requires that where an offence has been committed by the company, every person who at the time the offence was committed was in charge of an was responsible to the company for the conduct of business shall be deemed to be guilty of offence and shall be liable to be proceeded accordingly.

The aforesaid contention of the Noticee is misplaced for the following two reasons:

- i. The undersigned has been appointed to inquire into the allegations levelled in the SCN against the Noticee in the instant proceedings. Whether to proceed against the persons who were in charge of the Noticee is outside the scope of the present proceedings before me.
- ii. Regulation 52(1) of LODR Regulation casts an obligation on the listed entity, which in the instant proceedings is Noticee, to prepare and submit unaudited or audited financial results on a half yearly basis in the format specified by Board within 45 days from the end of the half year to the recognized stock exchange(s).

In view of the above observations, I do not agree with the contentions of the Noticee that SCN issued to Noticee is bad in the eyes of law.

- f) The Noticee has further submitted that there has been absolutely no gain or advantage experienced by the Noticee Authority, its board, officers or employees in the entire process of collation, approval and publication of the subject half yearly results. Therefore, the mandate of the Section 15J of SEBI Act has not been contravened by the Noticee Authority.

With regard to the above contention of Noticee, I agree that material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee. However, from the fact of the case it is clear that the Noticee has repeatedly violated the provisions of Regulation 52(1) of LODR Regulations despite SEBI advisory for timely compliance. In this regard, Section 15J (c) of SEBI Act, 1992, requires to consider this aspect for deciding the quantum of penalty. Therefore, I cannot overlook the repeated violation by the Noticee.

In this context, I would also like to rely on observation of Hon'ble SAT in Premchand Shah and Others V. SEBI dated February 21, 2011, wherein it was held that "*.....When a law prescribes a manner in which a thing is to be done, it must be done only in that manner.....Non-disclosure of information*

in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments..... " .

Hon'ble Supreme Court of India, in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary"*.

In addition, it is crucial to mention here that financial statements are important because they contain significant information about a company's financial health. They are the barometer of a company's operations. Investors depend on the truth and fairness in the financial statements to make informed decisions. Moreover, it is not only investors, but a lot of stakeholders like operational creditors and lending institutions like banks that need to gauge the profitability and track record before opening up lines of credit to a company.

Further, timely disclosure of relevant information by listed companies is essential for maintaining transparency about the affairs of the Company which helps in eliminating information asymmetry. Moreover, correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision. In this context, I would like to rely on observation of Hon'ble SAT in the matter of Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014) wherein it was held that *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are*

very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."

Therefore, in view of the above observations, although the amount of disproportionate gain or loss has not been quantified on record, the relevance of making timely disclosures cannot be denied.

In view of the above findings, I do not accept the contentions of the Noticee.

- g) Noticee has further contended that it is an entity which has been established by the Government of India under specific Statute and has been classified as 'State' within the meaning of Article 12 of Constitution of India. Its board includes public servants and therefore issuance of SCN warranted prior consent from Central Government as provided under Code of Criminal Procedure, 1973 and therefore the instant SCN infringes with the said statutory immunity and is thus liable to withdrawn.

The instant proceedings against the Noticee is quasi-judicial in nature, distinct from the criminal action, which has been initiated for alleged failure by Noticee to comply with statutory obligations cast on a listed entity in respect of submitting half yearly financial results to the stock exchange(s) within a certain time period.

In view if the above, the contention of the Noticee regarding requirement of prior consent of the central government is misplaced and without any merit.

- h) Noticee has further stated that it has always been prompt and forthcoming in discharging its contractual and statutory obligations and has always

promptly acted to address and resolve investors' (bondholders') grievances.

The above submission of the Noticee has no relevance in the instant case and therefore, has no merit regarding alleged violation by the Noticee.

- i) Further, from the submissions of the Noticee, I observe that the Noticee has not denied the fact that it has violated the provisions of Regulation 52(1) of LODR Regulations.
- j) Based on the aforesaid findings, I conclude that the Noticee has violated the provisions of Regulation 52(1) of LODR Regulations.

Issue II: Does the violation, if any, attract monetary penalty under Section 15 A (b) of SEBI Act?

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".*

12. In view of the foregoing, I am convinced that the Noticee is thus liable for monetary penalty under Section 15A(b) of SEBI Act for violation of Regulation 52(1) of the SEBI (LODR) Regulations, 2015.

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

13. The provisions of Section 15J of the SEBI require that while adjudging the 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.

14. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failure. However, the facts of the case clearly bring out the repeated default made by the Noticee. I note that the Noticee failed to make timely disclosures thereby violated Regulation 52(1) of the SEBI (LODR) Regulations, 2015.

ORDER

15. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a penalty of Rs 7,00,000/- (Rupees Seven Lakh) on National Highway Authority of India in terms of the provisions of Sections 15A(b) of the Securities and Exchange Board of India Act, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the Noticee.

16. The Noticee shall remit / pay the said amount of penalty within 45 days from May 31, 2020 either

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

OR

Through e-payment facility into Bank Account, the details of which are given below:

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

OR

By way of demand draft in favour of “SEBI-Penalties Remittable to Government of India”, payable at Mumbai.

17. The Noticee shall forward the following details / confirmation of penalty so paid to the Chief General Manager, Enforcement Department, SEBI, Mumbai.

1. Case Name :	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for:	Penalty

18. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date: May 26, 2020

Place: Mumbai

PRASANTA MAHAPATRA

ADJUDICATING OFFICER