

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO/87/2011]

**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

SUMANTLAL C SHAH

(PAN No. - Not submitted)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in trading in the scrip of M/s Flawless Diamond India Limited (hereinafter referred to as ‘**FDIL**’/‘**Company**’) which is listed on Bombay Stock Exchange (hereinafter referred to as ‘**BSE**’). The period of investigation in the scrip of FDIL was from June 2006 to February 2007 (hereinafter referred to as ‘**Investigation Period**’).
2. The findings of the investigation led to the allegation that the shareholding of Mr. Sumantlal C Shah (hereinafter referred to as “**Noticee**”) in FDIL for the quarter ending March 2007 was nil. On account of conversion of warrants on April 24, 2007, the Noticee was allotted 10,22,500 shares and had thereby acquired 10,22,500 shares of FDIL i.e. 7.06% of total shareholding of FDIL. Thus, by means of said acquisition the shareholding of the Noticee had increased from nil to 7.06%.

3. Noticee, while crossing the threshold limit of 5% specified under regulation 7(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations**'), was required to make the disclosures to the company i.e. FDIL and to the stock exchange i.e. BSE as per regulation 7(1) read with regulation 7(2) of SAST Regulations i.e. within two days from the date of allotment/acquisition, which the Noticee had failed to do.
4. Further, as of the abovementioned allotment/acquisition, the Noticee while crossing the threshold limit of 5% specified under regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'), was required to make the disclosures to the company i.e. FDIL as per regulation 13(1) of PIT Regulations i.e. within four working days from the receipt of intimation of allotment of shares or from the date of acquisition of shares, which the Noticee had failed to do.
5. Thus, it was alleged that the Noticee had violated regulation 7(1) read with regulation 7(2) of SAST Regulations and regulation 13(1) of PIT Regulations and therefore consequently, liable for monetary penalty under section 15A(b) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

6. The undersigned has been appointed as Adjudicating Officer vide order dated March 23, 2011 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to inquire into and adjudge the alleged violations of provisions of SAST Regulations and PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. Show Cause Notice No. EAD-7/PB/AK/16907/2011 dated May 27, 2011 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of SEBI Act for the alleged violation specified in the said SCN. The said SCN was sent to Noticee through courier and was returned undelivered. Thereafter, the said SCN was resent to the Noticee via hand delivery and was delivered.
8. A reply dated September 19, 2011 was received from Mr. Jayesh S Shah, son of Shri Sumantlal C Shah stating *inter alia* the following points:
 - Shri Sumantlal C Shah had expired on February 13, 2011 and a copy of his death certificate was enclosed.
 - Therefore, it was requested that the said proceeding initiated against Shri Sumantlal C Shah may be abated.
9. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, Mr. Jayesh S Shah was granted an opportunity of personal hearing on October 11, 2011, vide notice dated September 23, 2011 sent through Hand Delivery to the Noticee. The said hearing notice was delivered and acknowledged. Mr. Balveer Singh Choudhary, Choudhary & Singhvi, Chartered Accountants, Authorized Representative, (hereinafter referred to as “**AR**”) appeared on behalf of the Mr. Jayesh S Shah. During the hearing, the AR stated that “...*Mr. Sumantlal C Shah Father of Mr. Jayesh S Shah had expired on February 13, 2010. In this regard, a copy of death certificate of Mr. Sumantlal C Shah had already been furnished vide letter dated September 19, 2011. Therefore, it is requested that, the adjudication proceedings initiated against Mr. Sumantlal C Shah may be abated....*”

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully perused the reply of the Mr. Jayesh S Shah dated September 19, 2011 and submissions made during the course of hearing on October 11, 2011 and other documents available on record. I am of the view that before proceeding in the matter on its merit, it would be in the fitness of the thing to first decide the preliminary issue as to whether in view of the death of Shri Sumantlal C Shah, the present Adjudication Proceedings against Shri Sumantlal C Shah, would continue or abate.
11. In *Girijanandini Vs Bijendra Narain (AIR 1967 SC 2110)*, the Hon'ble Supreme Court observed that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim *actio personalis moritur cum persona* (personal action dies with the death of the person) would apply.
12. It is also relevant to refer to the decision of Hon'ble Securities Appellate Tribunal (SAT) in *Chandravadan J Dalal vs. SEBI* (Appeal No. 35/2004 decided on June 15, 2005). The Hon'ble SAT in this case held that:
- “The appeal abates since the appellant during the pendency of the appeal died on 29th November 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates.”*
13. The violations alleged to have been committed by the Noticee relates to the period from March 2007 to April 2007. The SCN was issued to the Noticee on May 27, 2011 and Shri Sumantlal C Shah died on February 13, 2011. Thus, the proceedings were initiated against the personal acts of omission and commission of a person who is no more to face the charges.

ORDER

14. In view of the foregoing, I am of the view that the proceedings against the Noticee are liable to be abated without going into the merits of the case. The matter is disposed of accordingly.
15. In terms of rule 6 of the Rules, copies of this order are sent to the person who replied for the deceased Noticee and also to the Securities and Exchange Board of India.

Date: **October 25, 2011**

Place: **Mumbai**

PARAG BASU

ADJUDICATING OFFICER