BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PKK/AO/80/2011]

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.

Against

Smt. Urmila C. Bhansali

PAN: AEYPB8493A

In the matter of

Classic Diamond (India) Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted an investigation into the buying, selling and dealing in the scrip of Classic Diamond (India) Limited (hereinafter referred to as **'CDIL'**) for the period from July 03, 2006 to September 29, 2006. During the investigation it was revealed that the promoter's shareholding came down from 70.50% as on March 31, 2006 to 65.86% as on September 30, 2006. The reduction in the promoter's stake was mainly due to sale by Smt. Urmila C. Bhansali (hereinafter referred to as 'the Noticee'). The shareholding of the Noticee came down from 9.77% to 5.48% upon sale of 3,00,000 shares (4.29%). She has allegedly not made disclosures as required under Regulation

13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'Insider Trading Regulations'**).

2. SEBI has therefore, initiated adjudication proceedings under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**Act**") against the Noticee to inquire and adjudge the alleged violations of the provisions of 13 (3) of Insider Trading Regulations.

Appointment of Adjudicating Officer

3. In view of the above SEBI vide order dated February 02, 2011 appointed the undersigned as Adjudicating Officer **(AO)** in the instant matter under Section 15 I of the Act read with Rule 3 of SEBI (Procedure for holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Adjudicating Rules'**) to inquire into and adjudge under Section 15 A (b) of the SEBI Act, the alleged violation of the abovementioned provisions of the SEBI Act.

Show Cause Notice, Reply and Personal Hearing

4. The AO issued a notice dated March 08, 2011 (hereinafter referred to as '**SCN'**) under Rule 4 of the **Adjudicating Rules** to the Noticee to show cause as to why an inquiry should not be held against her and penalty be not imposed under Sections 15 A (b) of the SEBI Act, for the alleged violation of the provisions of Regulation 13 (3) of Insider Trading Regulations for which the adjudication proceeding has been initiated.

5. The allegation against the Noticee was that she has not made disclosures as required under Insider Trading Regulations for her sale of 3,00,000 shares which resulted in decrease of her total holding in the scrip of CDIL from 9.77% to 5.84%. The same breached the limit of 2% shares or voting rights of CDIL and was required to make disclosure to CDIL and the Stock Exchanges in which CDIL was listed.

6. The SCN was sent to the Noticee through "Registered Post with A/d" and was duly delivered. The Noticee vide her letter dated March 23, 2011 has filed her reply and interalia submitted that:

   a. She was under the bonafide belief that the provision of Regulation 13 (3) of Insider Trading Regulations was not applicable since each of the transaction was below the 2% threshold mentioned therein. The Noticee became aware of the non-disclosure only upon the receipt of the SCN.

   b. The alleged non-compliance was unintentional and inadvertent. Till date her conduct has never been found to be violative of any provisions of SEBI Act or Regulations and no action has been taken against her by SEBI.

   c. On October 16, the Company filed the disclosures relating to its shareholding pattern for the quarter ending September 30, 2006 under clause 35 of the Listing Agreement, wherein it had also mentioned the details of the Noticee's reduced shareholding in the Company was already in public domain.

   d. Any imposition of penalty would be unjustified and unwarranted. The Noticee has also not made any disproportionate gain or gained an unfair advantage and has not caused any loss to investors or group of investors.

Further, the non-disclosure was not deliberate and intentional and has not adversely affected the shareholders of the Company or the securities market in any manner.

7. In accordance with the submissions made by the Noticee and considering the facts available on record, I granted an opportunity of personal hearing to the Noticee and advised it to appear before me on April 08, 2011. The Hearing Notice dated March 24, 2011 was sent by hand delivery and duly received by the Noticee. Mr. Zubin Batliwala, the authorised representative of the Noticee appeared on her behalf before me on the said date. He at the time of hearing submitted that he had understood all the allegations against the Noticee and stated that they had submitted their reply dated March 23, 2011 in that regard.

8. The Noticee admitted that the non-disclosure under Insider Trading Regulations was out of ignorance and there were no malafide intentions. He finally requested for a lenient view to be taken in the matter.

Consideration of Issues, Evidence and Findings

9. I have carefully perused the charges made against the Noticee as mentioned in the SCN, the oral and written submissions made by the Noticee and the documents available on record. In the instant matter the following issues arise for consideration and determination:

   a. **Whether the Noticee had violated the provisions of the Insider Trading Regulations?**

b. Whether the Noticee is liable for monetary penalty prescribed under Section 15A (b) of the SEBI Act for the aforesaid violation?

c. If, yes what should be the quantum of monetary penalty?

10. Before proceeding, I would like to refer to the relevant provisions of the SEBI Act which reads as under:

PIT Regulations :

Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies.

Continual disclosure.

13(3) *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company [in Form C] the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*

11. I find that the Noticee was holding 6,79,860 shares construing 9.77% of the share capital of CDIL as on June 30, 2006. As submitted by the Noticee, she had sold 50,000 shares each on September 15, 2006 and September 20, 2006. She has sold another 2,00,000 shares on September 21, 2006. The aggregate sale of 3,00,000 shares resulted in a decrease of her total

holding by 4.29% of the paid up capital of CDIL to 5.84%. The sale of shares made by her was more than 2% of the share capital/ voting rights of CDIL and was required to make disclosure to CDIL and the Stock Exchanges in which the shares of CDIL are listed. The Noticee admitted that she has not made disclosures as required under the Insider Trading Regulations which is in violation of Regulation 13 (3) of Insider Trading Regulations.

12. The basic purpose of disclosure requirement inherent in the above mentioned Regulations is to bring about transparency in the securities market and to keep the market informed about substantial acquisition or sale of share holding in a listed company. The Hon'ble SAT in the matter of ***Milan Mahindra Securities Pvt. Ltd. Vs, SEBI*** *(Appeal No. 66 of 2003 and order dated November 15, 2006.),* ***regarding the importance of disclosures, has observed that "the purpose of these disclosures is to bring about transparency in the transactions and assist the regulator to effectively monitor the transactions in the market". Thus any violation of the disclosure requirements has to be view seriously.***

13. From the foregoing, I find the charges against the Noticee are established beyond doubt. Therefore, the Noticee violated Regulation 13 (3) of Insider Trading Regulations. The violations as above warrant imposition of penalty as per the provisions of Section 15 A (b) of the Act.

14. The Hon'ble Supreme Court of India in the matter of ***SEBI v. Shri Ram Mutual Fund*** **[2006] 68 SCL 216(SC)** *inter alia* held: ***"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow."***

15. Thus, the aforesaid violations by the Noticee make her liable for penalty u/s. 15 A (b) of SEBI Act, 1992 which reads as follows:

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rule or regulations made there under, —*

… … …

(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.;

16. While imposing monetary penalty it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:

"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."

17. It is difficult to ascertain the disproportionate gain or unfair advantage to the Noticee, accrued due to the aforesaid non-disclosure. Further, it is difficult to establish repetitive nature of the default made by the Noticee but it is a fact that the Noticee failed to make the disclosure under Insider Trading Regulations. On the basis of the documents available on record, it is established that the Noticee failed to fulfill regulatory requirements under Insider Trading Regulations for which the Noticee should be penalized.

Order

18. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me U/S 15-I (2) of the SEBI Act, 1992, I hereby impose a penalty of ₹ 25,000/- (Rupees Twenty Five Thousand only) on the Noticee. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

19. The penalty shall be paid by way of demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to Division Chief, Investigation Department (ID-1), Securities and Exchange

Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

20. In terms of the provisions of Rule 6 of the Adjudicating Rules the copies of this order are sent to Smt. Urmila C. Bhansali and also to Securities and Exchange Board of India.

Date: April 08, 2011 **P. K. KURIACHEN**

Place: Mumbai **ADJUDICATING OFFICER**