BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. SRP/RK/AO- 60/2010]

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

In respect of

Dombivli Nagari Sahakari Bank Ltd.

(PAN: AAATD3444K)

In the matter of

Blue Coast Hotels and Resorts Limited

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigations into the alleged irregularity in the trading and dealings in the shares of Blue Coast Hotels and Resorts Limited (hereinafter referred to as **"BCHRL/ Company**") and into possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) and the Regulations made thereunder. The shares of BCHRL were listed on various stock exchanges, including, the Bombay Stock Exchange Ltd. (**BSE**) and the National Stock Exchange of India Ltd. (**NSE**).

2. The investigation, prima facie, revealed that M/s. Dombivli Nagari Sahakari Bank Ltd. (hereinafter referred to as **"Noticee"**) acquired shares/ voting rights of BCHRL during the period April-May 2003 and there was change in shareholdings/voting rights of the Noticee in March 2005, but it failed to comply with the disclosure requirements specified under regulation 7(1) read with regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as **"SAST Regulations"**), regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT Regulations"**) and regulation 13(3) read with regulation 13(5) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as Adjudicating Officer vide order dated October 30, 2009 under section 15 I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Rules"**) to inquire into and adjudge under section 15A(b) of the SEBI Act, the alleged violation/contravention of the provisions of the SAST Regulations and the PIT Regulations, by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD-1/SRP/RK/183726/2009 dated November 18, 2009 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry be not initiated against it and penalty be not imposed under sections 15A(b) of the SEBI Act for the alleged violation of the provisions of regulation 7(1) read with regulation 7(2) of the SAST Regulations, regulations 13(1) of PIT Regulations and regulation 13(3) read with regulation 13(5) of the PIT Regulations.

5. The Noticee replied to the SCN vide letter dated December 30, 2009 and requested for a personal hearing in the matter. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of hearing on January 29, 2010. However, vide letter dated January 23, 2010 the Noticee requested to reschedule the hearing. Accordingly, the hearing was rescheduled to March 19, 2010. Mr. S. G. Gokhale, Advocate, appeared for hearing on behalf of the Noticee and made submissions. He also submitted certain documents during the hearing vide letter dated March 19, 2010.

6. The written and oral submissions made by the Noticee are mainly to the following effect :
    - *The transactions in respect of all 8,50,000 shares of BCHRL were in the nature of obtaining a collateral security for the loans granted by the Bank to BCHRL and Morepen Laboratories Limited (MLL). These shares were originally held in pledge account but subsequently as an abundant precaution, the Bank transferred the same to its DP account. Even after transfer to Bank's demat account these shares were held as security for the loans and were within the knowledge of the original holders and BCHRL.*
    - *In its own books of accounts, the Bank has not at all adjusted the value of shares against the loan amount from the borrowers at the time of transfer of shares.*

Similarly, at the time of retransfer also no amount is shown as consideration for the said shares. The Bank has never shown the shares in question as its 'investment'.

- *The required disclosure would be contrary to the factual position of the Bank's holding of shares as security only and further contrary to the Banks own statements of accounts which are duly audited and filed with the respective statutory authorities.*
- *The Company had made disclosure to the stock exchanges in the distribution schedule in the quarterly reports of our holding in the category of Banks, Financial Institutions, Insurance Companies etc.*
- *The Noticee has also relied on orders of Hon'ble SAT in Kensigton Investment Ltd. vs. SEBI (Appeal No.27, 28, 30 and 31 of 2002 decided on October 11, 2002) and VLS Finance Ltd. vs. AO, SEBI (Appeal No.12 of 2000 decided on October 31, 2000).*

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully examined the written and oral submissions made by the Noticee and the documents/material available on record. Before proceeding further it will be appropriate to succinctly state the facts relevant for the present proceedings.

8. I find from the available record that the shares of BCHRL are listed on various stock exchanges, including NSE and BSE, and during the years 2003-2007 the issued subscribed and paid up capital of BCHRL was 65,52,800 equity shares of Rs.10 each. On March 28, 2003 three promoters of BCHRL, namely, Epitome Holdings Pvt. Ltd., Mid Med Financial Services Investments Pvt. Ltd. and Scope Credits Financial Services Pvt. Ltd. pledged a total of 7,00,000 shares (10.68% of the share capital/voting rights) of BCHRL, with the Noticee towards a short term loan of Rs.300 lakh to BCHRL. Subsequently, the pledge was invoked and these shares were transferred in the demat account of the Noticee on April 27, 2003. Similarly, Ebony Traders Private Limited had pledged 1,50,000 shares (2.28% of the share capital/voting rights) of BCHRL with the Noticee towards a short term loan of Rs.325 lakh to Morepen Laboratories Ltd. (**MLL**). Subsequently, the pledge was invoked and the said shares were transferred in the demat account of the Noticee (client id: 10242524) on May 12, 2003. As MLL defaulted in the repayment of loan, the Noticee sold 500 shares in the market in August 2004 and the balance 1,49,500 shares of BCHRL remained in its demat account. In March 2005, BCHRL repaid the said short term loan. The Noticee transferred back 5,50,000 shares (8.39% of the equity capital/voting rights) of BCHRL, out of the total balance of 8,49,500 shares (12.96% of the share capital/voting

rights), to the original holder of the shares on March 23, 2005. The remaining shares continued to be held with the Noticee.

9. It has been alleged that the above transfer of 7,00,000 shares/voting rights (10.68% of the share capital) on April 27, 2003 required disclosure to be made by the Noticee to the Company within four working days from the date of acquisition as per regulation 13 (1) of PIT Regulations. The further acquisition/transfer of 1,50,000 shares/voting rights (2.28% share capital) on May 12, 2003 by the Noticee were also required to be disclosed to the Company within four working days from the date of acquisition as per regulation 13(3) read with regulation 13(5) of PIT Regulations. Similarly, the Noticee was also required to disclose to the Company and to the stock exchanges where the shares of the Company were listed about its acquisition on April 27, 2003, within two working days from the date of acquisition of shares/voting rights, as per regulation 7(1) read with regulation 7(2) of SAST Regulations. However, the Noticee had not made the aforesaid disclosures either to the Company or to the stock exchanges within the stipulated time. It was also alleged that the decrease in shareholding of the Noticee by 8.39% of the share capital of the Company on March 23, 2005 was also required to be disclosed by the Noticee to the Company within four working days from the date of transfer as per regulation 13(3) read with regulation 13(5) of PIT Regulations. However, the Noticee has not made the aforesaid disclosure to the Company within the stipulated time.

10. In view of above, the issues that arise for consideration in the present case is whether the Noticee has failed to comply with the provisions of regulation 7 (1) read with regulation 7 (2) of the SAST Regulations and/or regulations 13(1) of PIT Regulations and/or regulation 13(3) read with regulation 13(5) of the PIT Regulations and whether non-compliance, if any, attract penalty under section 15A (b) of the SEBI Act.

11. Before moving forward, it would be appropriate to refer to the relevant provisions of the SAST and PIT Regulations :

SAST Regulations:

> ***7. Acquisition of 5 per cent and more shares or voting rights of a company.***
> *(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*
> *…. ……*
> *(2) The disclosures mentioned in sub-regulations (1)… … shall be made within two days of,—*

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

PIT Regulations:

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

13. *(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of* :—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

Continual disclosure

(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.

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of :

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

12. There is no dispute over the facts that after the pledge on the shares was invoked by the Noticee the shares were transferred in the demat account of the Noticee or the fact that the Noticee has not made the disclosures as required under the provisions of SAST Regulations and PIT Regulations to the Company and to the stock exchanges within the stipulated time. However, the Noticee has submitted that the transaction in question was not of investment or acquisition of shares but was towards security in favour of the Bank/Noticee. In such circumstances the required disclosure would be more dis-informative than informative.

13. In this context, it would be worthwhile to refer to the Order of the Hon'ble SAT dated August 28, 2001 in the matter of Kiron Margadarsi Financiers Vs. AO, SEBI (Appeal No. 21 of 2001 decided on August 28, 2001) relevant portion of which is produced as under:

> *"A perusal of regulation 2(1)(b) (of SAST Regulations) clearly reveals that a person is an acquirer when he acquires or agrees to acquire shares or voting rights / control in the target company. The mode of acquisition of shares or the purpose of acquisition is of not much significance to identify the acquirer. As has been held in the case of Joshi Jayantilal v. State of Gujarat AIR 1962 Guj 297 and as per the Blacks law Dictionary acquisition is the act of becoming the owner of certain property, the act by which one acquires or procures the property in any thing. …"* .

14. I find that after invocation of pledge the shares were transferred in the demat account of the Noticee and therefore, their name was entered as beneficial owner in the records of the depository. In view of section 87(1) and section 41(3) of the Companies Act, 1956 it is clear that the Noticee became holder of the shares when it was transferred in its demat account and was entitled to exercise voting rights attached to those shares. Therefore, the Noticee was clearly the acquirer and holder of shares with voting rights.

15. The Noticee has submitted that the shares were held by it as a security for loan advanced and in such circumstances the required disclosure would be more dis-informative than informative. In this regard I am of the view that the disclosure requirements under SAST Regulations and PIT Regulations have been enacted with an objective to ensure transparency in the transactions and to assist regulatory bodies in effectively monitoring such transactions to safeguard the interests of the investors/ existing shareholders of the company or for defense mechanism of the company and promoters and providing the shareholder an opportunity to exit at that stage, in case of change in shareholding pattern or control over their company where it is not to the satisfaction of a shareholder. Further, in this automated and demat trading environment positions can be built very fast, therefore, timely dissemination of information helps public to take informed investment/disinvestment decision. The dissemination of information at the earliest also helps in ensuring fair and equitable playing field for all. As has been observed earlier shares with voting rights have been acquired by the Noticee and it held these shares for a fairly long time. This information was of vital importance not only for the investing public but also for regulatory authorities. In this regard, the Hon'ble SAT in the matter of *Milan Mahendra Securities Pvt. Ltd. Vs SEBI (*Appeal No. 66 of 2003 decided on November 15, 2006), 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. We cannot therefore subscribe to the view that the violation was technical in nature"*. Therefore, I do not find any merit in the submissions of the Noticee.

16. It view of the fact that 7,00,000 shares/voting rights of BCHRL were acquired by the Noticee on April 27, 2003, which was more than 10% of share capital/voting rights of the Company, the Noticee was under obligation to disclose to the Company and to the stock exchanges where the shares of the Company were listed about this acquisition within two days from the date of acquisition of shares/voting rights as per regulation 7(1) read with regulation 7(2) of SAST Regulations. Further, as the Noticee was holding more than 5% shares/voting rights in BCHRL on April 27, 2003 it was required to disclose in the prescribed form to the Company the number of shares/voting rights held by it within four

working days from the date of acquisition as per regulation 13 (1) of PIT Regulations. The Noticee has failed to make these disclosures.

17. As the Noticee was holding 10.68% shares/voting rights in BCHRL and it further acquired, by way of invocation of pledge, 1,50,000 shares/voting rights on May 12, 2003, which constituted more than 2% shareholding/voting rights in the Company, it was under obligation to make disclosure in the prescribed form to the Company within four working days from the date of acquisition as per regulation 13(3) read with regulation 13(5) of PIT Regulations. The Noticee has not made any such disclosure.

18. The Noticee transferred back 5,50,000 shares/ voting rights (8.39% of the share capital) of BCHRL, out of the total 8,49,500 shares (12.96% of the share capital/voting rights) held by it, to the original owner of the shares on March 23, 2005. As the Noticee was holding more than 5% shares/voting rights in BCHRL and the decrease in shareholding on March 23, 2005 exceeded 2% of the total shareholding/voting rights of the Company, the Noticee was under obligation to disclose this change to the Company in the prescribed form within four working days from the date of transfer as per regulation 13(3) read with regulation 13(5) of PIT Regulations. The Noticee again failed to make the required disclosure.

19. In light of all the above discussions, I am of the opinion that the Noticee has violated/contravened the provisions of regulation 7(1) read with regulation 7(2) of the SAST Regulations and regulations 13 (1) and 13 (3) read with regulation 13 (5) of the PIT Regulations, which makes it liable for monetary penalty under Section 15A (b) of the SEBI Act.

20. It is pertinent to mention here that the representative of the Noticee has argued that the violations were not intentional and were only technical in nature and therefore no penalty be imposed. He has relied on the orders of Hon'ble SAT in *Kensigton Investment Ltd. vs. SEBI (Appeal No.27, 28, 30 and 31 of 2002 decided on October 11, 2002)* and *VLS Finance Ltd. vs. AO, SEBI (Appeal No.12 of 2000 decided on October 31, 2000).* In this regard, I am of the view that the basic purpose of disclosure requirement inherent in the abovementioned regulations is to bring about transparency in the securities market and to keep the market informed about substantial acquisition or sale of shareholding by any body in a listed company therefore, failure to disclose can not be viewed as a technical violation. Further, the Hon'ble Supreme Court of India in the matter of ***SEBI Vs. Shri Ram Mutual Fund*** **[2006] 68 SCL 216(SC)** held that *"… ….. penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is*

established and hence the intention of the parties committing such violation becomes wholly irrelevant…".

21. Therefore, I am of the view that the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act, which states as under -

> ***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, -*
>
> *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.*

22. While determining the quantum of penalty under section 15 A (b) of the SEBI Act, the factors stipulated under section 15J of SEBI Act, is to be taken into account. Section 15J 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 result of the default;*
> *(c) the repetitive nature of the default."*

23. In this regard, I would like to mention that from the material available on record, it is not possible to ascertain the disproportionate gain or unfair advantage which may have accrued to the Noticee or the loss that the investors would have incurred as a result of the aforesaid default by the Noticee. However, I am of the opinion that the change in the shareholding and timely disclosure thereof, is of prime importance from the point of view of shareholders/investors as that would have prompted them in making decision on investment or otherwise. It would also be difficult to come to a firm conclusion as to how the general shareholders would have reacted on knowing the aforesaid change in the shareholding. On account of failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the concerned stakeholders were deprived of the important information at the relevant point of time.

24. The material available on record suggest that on one occasion the Noticee has defaulted in making the required disclosures under the SAST Regulations and atleast on three

occasions under the PIT Regulations and therefore the default of the Noticee is repetitive in nature.

25. Therefore, in consideration of all the facts and circumstances of the case as well as the submissions made by the Noticee, I am of the view that a penalty of Rs.1, 00,000 on the Noticee shall be commensurate with the violations committed by it.

ORDER

26. In exercise of the powers conferred upon me under Section 15 I of the Act and rule 5 of the Rules, I impose penalty of Rs.1,00,000/- (Rupees one lakh only) on the Noticee in terms of the provisions of Section 15A(b) of the Act for the violation of the provisions of regulation 7(1) read with regulation 7(2) of the SAST Regulations and violation of regulations 13(1) and 13(3) read with regulation 13(5) of the PIT Regulations. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by the Noticee.

27. The Noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to - The General Manager, Division of Corporate Restructuring, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

28. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date : April 12, 2010 **Satya Ranjan Prasad**
Place : Mumbai **Adjudicating Officer**