BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.ISD/FDIL/AO/DRK-AKS/EAD-3/357/23-13]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against:

Rotomac Global Pvt. Ltd.

901, Raheja Centre
Free Press Journal Marg
Nariman Point, Mumbai- 400006

FACTS IN BRIEF

1. An alert was generated at IMSS regarding huge off-market transfer at National Securities Depository Ltd. (hereinafter referred to as '**NSDL**') and Central Depository Services (India) Ltd. (hereinafter referred to as '**CDSL**') wherein it was observed that significant quantity of shares of Flawless Diamond (India) Ltd. (hereinafter referred to as ' **FDIL** / **Company**') has been transferred through off-market transfer from Promoter / Non-Promoter related entities to Rotomac Global Pvt. Ltd (hereinafter referred to as '**RGPL / noticee**') on 30/10/2009 and 31/10/2009.

2. Based on the alert, information was collected from Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**'), NSDL and CDSL and clarification was sought from the company and RGPL.

APPOINTMENT OF ADJUDICATING OFFICER

3. I was appointed as the Adjudicating Officer and the same was communicated vide proceedings of the Whole Time Member appointing Adjudicating Officer dated 09.05.2011 under Section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**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 under Section 15A (b) of the SEBI Act, the violation of Regulations 13 (1), 13 (3) read with 13 (5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') and Regulations 7 (1), 7 (1A) read with 7 (2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**Takeover Regulations**') alleged to have been committed by the noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. A Show Cause Notice (herein after referred to as **'SCN'**) dated 30.06.2011 was served on the noticee by "Hand Delivery Acknowledgement Due" in terms of the provisions of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 requiring the noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on the noticee under Section 15A (b) of the SEBI Act.

5. In the said notice, it was stated / alleged that:

- The noticee has delayed in disclosing to both the company and to BSE about the details of acquisition of shares of FDIL from the Promoter / Non-Promoter related entities as required under Takeover Regulations.
- Further, it was also alleged that the noticee has made no disclosure of its acquisition of shares to the company as required under PIT Regulations.
- Morever, it was also alleged that the transferred shares of FDIL had been transferred back to the transferors by the noticee for which there was delay in intimating the same to BSE which led to the violation of Takeover Regulations. Also the noticee failed to make the disclosure for the same under PIT Regulations.

6. Noticee vide its letter dated 08.07.2011 expressed its desire to avail the consent process. As per SEBI's internal guidelines, although the noticee was under consent, vide hearing notice dated 26.08.2011 the noticee was granted an opportunity of hearing on 08.09.2011 at SEBI Bhavan, Mumbai and was also advised to submit a reply to the SCN by 05.09.2011. It was also clarified to the noticee that the current adjudication proceedings would be continued except passing of the final order which will be kept in abeyance till completion of the consent proceedings.

7. Noticee vide its letter dated 05.09.2011 requested to keep the matter in abeyance as the matter was under consent. However, vide hearing notice dated 08.09.2011, noticee was granted a final opportunity of hearing on 19.09.2011 at SEBI Bhavan, Mumbai and was also advised to submit a reply to the SCN by 16.09.2011. In response to the same, noticee vide its letter dated 19.09.2011 sought three weeks time to submit a reply to the SCN. Noticee's request was examined and vide hearing notice dated

26.09.2011 noticee was granted time till 05.10.2011 to submit a reply to the SCN and attend the hearing on 11.10.2011 at SEBI Bhavan, Mumbai.

8. In response to the same, noticee vide its letter dated 03.10.2011 authorized Shri Balveer Singh Choudhary, Chartered Accountant (hereinafter referred to as '**AR**') to attend the scheduled hearing. The AR at the time of hearing submitted that no consideration was paid by the noticee to the pledgers for the pledge agreement (s) entered by the noticee with the pledgers. The AR submitted that the said transaction is an off-market transfer and is in the nature of pledge. The AR further submitted that the non creation / cancellation of pledge as per the requirements of Depositories Act, 1996 and SEBI (Depositories and Participants) Regulations, 1996 is technical in nature. The AR has undertaken to submit a reply to the SCN along with the following clarifications within a week from the date of hearing:

- Whether the said transaction by the noticee was one off transaction or the noticee is in this line of business?
- Can a pledge property be further pledged by the pledgee?
- Clarification with respect to Section 187 C of the Companies Act, 1956 as mentioned in para 8 of the pledge agreement.

9. Accordingly the noticee vide its letter dated 01.11.2011 submitted a reply to the SCN wherein the noticee stated as follows-

- The noticee has not acquired 40,00,000 Shares of FDIL on 30th October 2009 and 31st October 2009 but these shares were received by the noticee as loan / pledge for the purpose of creating margin for the stock broker.

- There was a delay in reporting the pledge transaction to the Company as well as to Stock Exchange under Regulation 7 (1) read with Regulation 7(2) of the Takeover Regulation.

- Since the noticee had not acquired any equity shares of the Target Company therefore there was no need to file any disclosure under Regulation 13 (3) read with Regulation 13(5) of the PIT Regulations.

- It is submitted that the noticee is not covered under Regulation 7 (1A) of the Takeover Regulations. Therefore there was no need to file any report under the said Regulation. Noticee further states that it had transferred back 20,00,000 shares of the Target Company to Smt. Jalak K Jain and Shri Abhishek B Jain (Promoter of the Target Company), which were taken as pledge from the said persons on 31st October 2009. Similarly the said transaction is not covered under Regulation 13 (3) read with Regulation 13 (5) of the PIT Regulations.

- Since the noticee did not sell any equity shares of the Target Company therefore there was no need to file any disclosure under Regulation 13 (3) read with Regulation 13 (5) of the PIT Regulations.

- Noticee further submitted the following clarifications as sought at the time of hearing

    - Only these off market transactions were entered.
    - As per noticee's knowledge and belief, pledge property can be further pledged by the pledgee.

10. The noticee submitted that it had enclosed the gist of Section 187 C of the Companies Act, 1956 and a copy of its PAN Card. However, the same were not found to be enclosed along with the letter.

11. It is noted that the noticee's consent application was rejected by the High Powered Advisory Committee and the same was informed to the office of the Adjudicating Officer on 21.03.2013.

CONSIDERATION OF EVIDENCE AND FINDINGS

12. I have taken into consideration the facts and circumstances of the case and the material made available on record. The allegations in the present matter are that the noticee has delayed / failed to make necessary disclosure under Takeover Regulations and PIT Regulations for its acquisition and disposal of shares of FDIL.

13. The noticee has submitted that it had entered into a pledge agreement with Sethia Gems Pvt. Ltd., Manmohan Gems Pvt. Ltd., Shri Abhishek Jain and

Smt. Jalak Jain (hereinafter referred to as '**Promoter / Non-Promoter entities**') for 40,00,000 shares of FDIL. However, the investigation report (hereinafter referred to as '**IR**') observes that the documents submitted for the proof of the pledge are not in accordance with the provisions of Depositories Act, 1996 (hereinafter referred to as '**DP Act**'), SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as '**DP Regulations**') and the Bye-laws and Business Rules of the Depositories. Pledge or hypothecation under the DP Regulations does not involve any transfer of shares from the pledger to the pledgee as only an entry is recorded in respect of the securities so pledged or hypothecated, which would evidence the creation of pledge. Since shares from Promoter / Non-Promoter entities were clearly transferred in off-market to the noticee and noticee's demat account does not indicate any creation of pledge, the IR observes that the noticee's argument regarding shares were pledged may not be accepted.

14. In this regard it may be noted that the said shares are in demat form. The manner of creating pledge is given in the DP Act and DP Regulations. It is observed from Section 12 of the DP Act and Regulation 58 of DP Regulations that for creation of pledge, the pledger has to make an application to the depository through the participant and the participant after making a note in its records of the notice of pledge, forward the application to the depository. The depository after confirmation from the pledgee that the securities are available for pledge with the pledger shall within 15 days of receipt of the application creates and records the pledge and send an intimation of the same to the participants of the pledger and the pledgee. On receipt of the intimation the participants of both the pledger and the pledgee shall inform the pledger and the pledgee respectively of the entry of creation of the pledge. An entry in the records of a depository shall be evidence of a pledge.

15. Further, it is also seen from Bye-Law 9.9 of NSDL and Business Rule 12.9 of NSDL that there is a specific procedure for creation of pledge. The pledger has to submit an instruction to the depository participant (hereinafter referred to as '**DP**') to initiate a pledge request in the DPM (software provided by NSDL to the DP) indicating the option 'create a pledge' in the pledge form. The DP will accept the form for processing and issue an acknowledgment for the same to the pledger. The DP then will enter the details of the request in the DPM, generate a pledge instruction number for the request and release the request to NSDL. The securities pledged are moved from 'Free balances' to 'Pledged balances' account. The DP shall write the pledge instruction number on the pledge form and intimate the same to the pledger. Further, Regulations 58 (6) and 58 (7) of DP Regulations lays down the manner of cancellation of a pledge. It states that a pledge may be cancelled by the depository if the pledger or the pledgee makes an application to the depository through its participant provided there is prior concurrence of the pledgee. The depository on the cancellation of the entry of pledge shall inform the participant of the pledger.

16. It is noted from the available records that none of the documents required under DP Act, DP Regulations, Bye-Law and Business Rule of NSDL as discussed above for creation of pledge such as copy of the instruction to the DP given by the pledger to initiate a pledge request or the acknowledgment by the DP for processing pledgee's request or pledge instruction number, has been submitted by the noticee. Rather it is seen from the transaction statements received from NSDL that on 30/10/2009 and on 31/10/2009, noticee had received in an off-market transaction 40,00,000 shares of FDIL from Promoter / Non-Promoter entities. Further, NSDL in its letter dated 03.06.2010 has submitted data for the period from 16.10.2001 to 26.05.2010 regarding creation of pledge in the scrip of FDIL. It is observed

from the said data that no pledge in the scrip of FDIL was created in favour of the noticee.

17. Further, as per Regulation 58 (6) of the DP Regulations the pledge can be cancelled by the pledger or the pledgee by making an application to the depository through its participant with prior concurrence of the pledgee. It is observed that the noticee has not submitted a copy of the application made to the depository through its participant to cancel the pledge.

18. In this case, I would like to quote the order of the Hon'ble Securities Appellate Tribunal, in *Parsoli Corporation Limited et al* Vs *SEBI* dated 12.08.2011 wherein it was held as follows:

> *"…There is no material on the record to show that the shares were ever pledged. The mere ipse dixit of the appellants cannot be accepted. It is pertinent to mention that there is a procedure prescribed under the Depositories Act and the regulations framed thereunder for pledging shares and when a pledge is created the same is recorded in the records of the depository. Had a pledge been created, as is now sought to be argued, the appellants would have produced the records from the depository..."*

19. In view of the facts of the case and the Order of the Hon'ble Securities Appellate Tribunal, noticee's submission that the shares were pledged is not legally tenable.

20. The IR states that the noticee had acquired 40,00,000 (24%) shares of FDIL from Promoter / Non-Promoter entities as under:

Date	**Name of the Transferor**	**Name of the Transferee**	**Quantity of shares**
30/10/2009	Sethia Gems Pvt Ltd	Rotomac Global Pvt Ltd	10,00,000 (6%)
31/10/2009	Manmohan Gems Pvt. Ltd.	Rotomac Global Pvt Ltd	10,00,000 (6%)
31/10/2009	Jalak K Jain	Rotomac Global Pvt Ltd	10,00,000 (6%)
31/10/2009	Abhishek B Jain	Rotomac Global Pvt Ltd	10,00,000 (6%)

			40,00,000 (24%)

21. It is further observed from the IR that although the noticee had acquired 10,00,000 shares (6% of the paid up share capital of the company) of FDIL on 30.10.2009 and 30,00,000 shares (18% of the paid up share capital of the company) of FDIL on 31.10.2009, noticee had disclosed to the company about both the acquisitions only on 15.12.2009 and the same has been disclosed by the noticee to the stock exchange only on 22.12.2009.

22. Under Regulation 7 (1) read with Regulation 7 (2) of Takeover Regulations, noticee is required to disclose to the company and the stock exchange within 2 days of the receipt of intimation of shares or the acquisition of shares / voting rights, as the case may be. There is nothing on record to show that the noticee has made the required disclosure within the time stipulated under Regulation 7 (1) read with Regulation 7 (2) of Takeover Regulation. Noticee's argument that it had not acquired the shares rather the noticee had received them as loan / pledge is not acceptable as the shares were not pledged as concluded above. Since the noticee has delayed in furnishing the said information to the company and to the stock exchange, noticee has violated Regulation 7 (1) read with Regulation 7 (2) of Takeover Regulations. The text of the said Regulations is reproduced below:

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

Acquisition of 5 per cent and more shares or voting rights of a company.

7. (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) and (1A) 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.

23. Further, under Regulation 13 (1) of PIT Regulations, noticee is required to disclose to the company within 2 working days of the receipt of intimation of allotment of shares or the acquisition of shares, as the case may be. There is nothing on record to show that the noticee had made disclosure as required under Regulation 13 (1) of PIT Regulations to the company. Thus, it can be concluded that the noticee has violated Regulation 13 (1) of PIT Regulations. The text of the said Regulations is reproduced below:

SEBI (Prohibition of Insider Trading) Regulations, 1992

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 2 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.

24. Further the IR observes that the transferred shares of FDIL had been transferred back to the transferors as mentioned below.

Date	**Name of the Transferor**	**Name of the Transferee**	**Quantity of shares**
23/12/2009	Rotomac Global Pvt Ltd	Jalak K Jain	10,00,000 (6%)
23/12/2009	Rotomac Global Pvt Ltd	Abhishek B Jain	10,00,000 (6%)
15/03/2010	Rotomac Global Pvt Ltd	Sethia Gems Ltd	10,00,000 (6%)
15/03/2010	Rotomac Global Pvt Ltd	Manmohan Gems Pvt. Ltd.	10,00,000 (6%)
			40,00,000 (24%)

25. It is observed from the IR that the noticee has intimated to the company on 26.12.2009 regarding its transfer of 20,00,000 shares (12% of the paid up share capital of the company) back to the Promoters under Takeover Regulations. However, there was delay in intimating the same to BSE. Therefore, it can be concluded that the noticee has violated Regulation 7 (1A) read with Regulation 7 (2) of Takeover Regulations. However, there is nothing on record to show that the noticee has made the said disclosure as required under Regulation 13 (3) read with Regulation 13 (5) of PIT Regulations to the company. Hence, the noticee has also violated Regulation 13 (3) read with Regulation 13 (5) of PIT Regulations. The text of the said Regulations is reproduced below:

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

7 (1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11[1], or under second proviso to sub-regulation (2) of regulation 11[2] shall disclose purchase or sale aggregating two per cent or more

[1] **11 (1)** No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, [15 per cent or more but less than [fifty five per cent (55%)] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than [5% of the voting rights],[with post acquisition shareholding or voting rights not exceeding fifty five per cent.,] [in any financial year ending on 31st March] unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

[2] **11 (2)** No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through [or with] persons acting in concert with him any additional shares [entitling him to exercise voting rights] or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations: Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures ‗seventy-five per cent (75%)', the words and figures ‗ninety per cent (90%)' were substituted.]
[Provided further that such acquirer may, [notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11,] without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent. (5%) voting rights in the target company subject to the following:- (i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant

of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Explanation—For the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

7 (2) The disclosures mentioned in sub-regulations (1) and (1A) 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.

SEBI (Prohibition of Insider Trading) Regulations, 1992
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.

13 (5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within two 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.

26. Moreover, it is also noted from the IR that the noticee had transferred 20,00,000 shares (12% of the paid up share capital of the company) back to Manmohan Gems Pvt. Ltd. and Sethia Gems Pvt. Ltd. on 15.03.2010 for which no disclosure has been made by the noticee to the company. Hence, it can be concluded that the noticee has violated Regulation 13 (3) read with Regulation 13 (5) of PIT Regulations.

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to a buy back of shares by the target company; (ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).]

27. The said violations attract penalty under Section 15A (b) of the SEBI Act. The text of Section 15A (b) is as follows:

> 15A. Penalty for failure to furnish information, return, etc.- If any person, who is required under this Act or any rules or regulations made thereunder,-
>
> …
>
> (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.

28. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules 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

29. With regard to the above factors to be considered while determining the quantum of penalty, it is observed that the investigation report has not quantified the profit / loss for the nature of violations committed by the noticee. It may be added that it is difficult to quantify the profit/ loss for the nature of violation committed by the noticee and no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the noticee's violation.

30. In view of the abovementioned conclusion and after considering the factors under Section 15J of the SEBI Act, I hereby impose a penalty of

₹ 7,50,000/- (Rupees Seven Lakh Fifty Thousand only) on the noticee under Section 15A (b) of the Securities and Exchange Board of India Act, 1992 for the violations of Regulation 7 (1), Regulation 7 (1A) read with Regulation 7 (2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 13 (1), Regulation 13 (3) read with Regulation 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 which is appropriate in the facts and circumstances of the case.

ORDER

31. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and 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 ₹ 7,50,000/- (Rupees Seven Lakh Fifty Thousand only) on Rotomac Global Pvt. Ltd. in terms of the provisions of Section 15A (b) of the Securities and Exchange Board of India Act, 1992 for the violation of Regulation 7 (1), Regulation 7 (1A) read with Regulation 7 (2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 13 (1), Regulation 13 (3) read with Regulation 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992. 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.

32. 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 Deputy General Manager- ISD, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

33. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are being sent to Rotomac Global Pvt. Ltd. having office at 901, Raheja Centre, Free Press Journal Marg, Nariman Point, Mumbai- 400021 and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: April 16, 2013

D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER