

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - SD/AO-47/2009]

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

M/s Mittal Securities Finance Ltd. (Now Known as Clarus Finance & Securities Ltd.) in the matter of Mittal Securities Ltd.

PAN: AABCM6734H

FACTS OF THE CASE IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') has investigated into the dealings in the scrip of Mittal Securities Finance Ltd. for the period February 02, 2005 to February 14, 2005.
2. SEBI has initiated adjudication proceedings under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act'), against M/s. Mittal Securities Finance Ltd. (hereinafter referred to as the 'Noticee/ MSFL') on account of Noticee's failure to disclose the change in Shareholding Pattern to the Stock

Exchanges on which its shares are listed within the stipulated time period.

3. Investigation was conducted by SEBI in the scrip of MSFL & it was alleged that the Noticee failed to disclose to the stock exchanges the change in shareholding as the Noticee in its reply dated January 21, 2008 admitted that the Platinum Finvest Pvt. Ltd. & Pragari Finvest Pvt. Ltd. sold the shares during the period February 2, 2005 to February 14, 2005. It was alleged that since the Noticee received the money from the promoter group companies i.e. Pragari Finvest (I) Pvt. Ltd. & Plantinum Finvest Pvt. Ltd. after the promoter group companies sold the shares in the market, the Noticee was very much aware of the dealings of its promoter group companies & therefore the Noticee on its own would have disclosed the same to the stock exchanges under Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulation, 1992 (hereinafter referred to as "PIT"). Hence by not disclosing the same to the stock exchanges Noticee was alleged to have violated Regulation 13(6) of PIT.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer vide order of SEBI dated March 17, 2008 under section 15-I of the Act r/w 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 15A(b) of the SEBI Act, the alleged violation of the

provisions of Regulation 13 (6) of the SEBI (Prohibition of Insider Trading) Regulations, 1992.

SHOW CAUSE NOTICE/ REPLY

5. A show cause notice in terms of the provisions of Rule 4(1) of the Adjudicating Rules was issued to the Noticee on October 20, 2008 seeking reply of the Noticee as to why an inquiry should not be held against the Noticee in respect of the violations alleged to have been committed by Noticee. However, the Said Show Cause Notice came undelivered with the remark 'Left'. However, the new address of the Noticee was got & the copy of the said Show Cause Notice was thereafter send to the Noticee at the new address through Hand Delivery dated December 24, 2008. The Noticee vide letter dated January 09, 2009 sought for extension of time to submit its reply. Subsequently, the Noticee vide letter dated February 07, 2009 replied to the said SCN. The extracts of the reply of the Noticee, inter alia, are stated as under:

- During the period February 2, 2005 to February 14, 2005 M/s. Pragari Finvest (I) Pvt. Ltd. & M/s. Plantinum Finvest Pvt. Ltd. sold 285500 & 249000 equity shares of the MSFL.
- The quantity & number of shares sold is very negligible
- Nobody in the market ever affected on account of our sale.

- The disclosures were not been intimated as per shareholding pattern as they were categorized under the heads of other body corporates.
 - This was an error of our officer who wrongly interpreted the categorization.
 - Requested to adjudicate the matter & asked for Personal Hearing.
6. 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 personal hearing on March 18, 2009. Mr. Ramesh Chandra Mishra appeared on behalf of the Noticee and submitted, *inter alia*, as under:
- i. The promoters of all the three companies are same i.e.
 - a. M/s. Clarus Finance & Securities Limited (formerly known as Mittal Securities Finance limited;
 - b. M/s. Platinum Finvest Private limited; and
 - c. M/s. Pragari Finvest Private Limited.
 - ii. The promoter sold their shares during the period February 2, 2005 to February 14, 2005 to return the loan of MSL.
 - iii. The three companies are small in size. And it was difficult at the relevant time to appoint and manage persons who has adequate knowledge of Securities Act and Regulations as framed under the SEBI Act.
 - iv. On inquire with the promoters we came to know that the promoters had admitted that they failed to make intimation/disclosures as required under regulation 13(3) & 13 (5) of the IT Regulation 1992 to (i) the company for the following reasons :

- a. The companies involved are small companies;
 - b. There were no adequate and qualified staff;
 - c. The promoters were not well conversant with the said applicable regulations i.e. IT Regulation 1992;
 - d. The shareholding pattern also wrongly classified the Promoter Group companies under the heading of other body corporate;
 - e. The error was inadvertent and accidental (for lack of knowledge of the applicable Regulation) ;
 - f. Failure to follow the regulation of 13 (3) & (5) of the insider regulation lead the violation of 13 (6) by the company as they were the people who controls the management of all the three companies.
- v. Regulation 13(6) requires that on receipt of the intimation, the company needs to intimate the same to the Stock Exchange within five days, but in the instant case, the company had not received any such intimation from the sellers (the promoter all companies are same) hence it was not possible to intimate the same to the stock exchange by the company reasons as explained herein above (para 4).
- vi. As per Regulation 13 (6) of the IT Regulation 1992 ,every Listed Company , within five days of receipt , shall disclose to all the stock exchanges on which the company is listed, the information received under sub-regulation (1),(2),(3) and (4) in the respective formats specified in Schedule III.
- vii. We humbly submit that the promoters failed to follow the regulation of 13 (3) & (5) of the IT Regulation 1992, which

lead to the violation of 13 (6) by the company as they were the people who controls the management of the company.

viii. After receipt of your investigation letter the company took adequate steps for compliance of the IT Regulation 1992 and implemented the code of Insider Trading which was long back adopted by the company in true Spirit. This can be verified by the recent intimations/Disclosures to the stock Exchanges. This shows our initiative of not only to admit any fault but also to take adequate steps to prevent and comply any applicable provisions in its true spirit.

CONSIDERATION OF EVIDENCE AND FINDINGS

7. I have carefully perused the written and oral submissions of the Noticee and the documents available on record. I find merit in the contention of the Noticee that the Noticee would have disclosed to the Stock Exchanges the information received under sub-regulation 13 (3) only after it received the same from M/s. Pragari Finvest (I) Pvt. Ltd. & M/s. Plantinum Finvest Pvt. Ltd who sold the shares of Noticee & were under statutory obligation to disclose the same to Noticee.
8. I have carefully examined the pith & substance of Regulation 13(6) of PIT Regulation & I am convinced that regulation cast disclosure obligation on the part of the Noticee only upon the receipt of information & not suo-moto. In the instant case, I note that the information was not received by the Noticee as the said information had not been submitted by M/s Pragari Finvest (I) Pvt. Ltd. &

M/s. Plantinum Finvest Pvt. Ltd. as they both have admitted in their reply dated March 18, 2009 that they failed to submit the disclosure requirement as required by Regulation 13(3) read with regulation 13(5) of PIT.

9. In view of the above, the allegation leveled against the Noticee doesnot stand established & the matter is, accordingly, disposed of.

10. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date: April 20, 2009

Place: Mumbai

SANDEEP DEORE

ADJUDICATING OFFICER