

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. BM/AO- 17 /2010]**

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**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**

**Ashok Kumar Jain**

(PAN. AAHPJ6589L)

In the matter of International Diamond Services Limited

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in the scrip of International Diamond Services Limited (hereinafter referred to as “**IDS/company**”) for the period April 02, 2007 to April 20, 2007 (hereinafter referred to as the “**period of investigation**”). The scrip of IDS was listed on Bombay Stock Exchange (hereinafter referred to as ‘**BSE**’), Delhi Stock Exchange (hereinafter referred to as ‘**DSE**’) and Vadodara Stock Exchange (hereinafter referred to as ‘**VSE**’).
2. As per the Investigation report (hereinafter referred to as IR) the Chairman of IDS, Mr. Ashok Kumar Jain (hereinafter referred to as

the “**Noticee**”) has been alleged to have violated Regulation 13(3), 13(4) and 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as ‘PIT Regulations’). Consequently, in respect of the alleged charges, the Noticee would be liable for monetary penalty under section 15A (b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and hence adjudication proceeding has been initiated against the Noticee.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. Shri V.S. Sundaresan was appointed as Adjudicating Officer vide order dated August 26, 2008 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 PIT Regulations committed by the Noticee.
4. Subsequent to the transfer of Shri. V. S. Sundaresan, I was appointed as the Adjudicating Officer vide order dated November 18, 2009.

### **SHOW CAUSE NOTICE, HEARING AND REPLY**

5. Show Cause Notice No. EAD-5/VSS/JR/139127/2008 dated September 25, 2008 (hereinafter referred to as “**SCN**”) was issued to the Noticee through the SEBI-NRO under rule 4(1) of the Rules to show cause as why inquiry should not be conducted and penalty be not imposed on the Noticee under section 15A (b) of the SEBI Act for the alleged violation specified in the said SCN. The SCN alleged that the Noticee failed to make disclosure under the provisions of PIT Regulations for the shares sold by him on BSE within stipulated time

and was thus not in compliance with the provisions of PIT Regulations.

6. Since neither acknowledgement of delivery of the SCN nor reply of the Noticee to the above SCN was received, a copy of the SCN was again issued on June 24, 2009 for delivery through the SEBI-NRO and also by Speed Post.
7. The SCN issued by Speed Post was delivered to the Noticee as per the acknowledgment card received on July 21, 2009. The SEBI-NRO in its report dated July 07, 2009 stated that the Noticee was not available at the given address, hence as observed from the copy of the SCN the same was delivered to Ms. C. Burad, sister in law of the Noticee. The copy of the SCN was acknowledged and signed by Ms. C Burad on July 01, 2009.
8. The Noticee vide email dated July 18, 2009 replied to the SCN stating interalia the following:

- Para 2

*Please note that I have written/informed to all concerned offices my intention to sell the share I held well in advance, exact date can be found in your records, has been confirmed that these letter available with your office during my several meetings with your official in past. These letter copies are not available with me right now in Japan., including SEBI BSE ROC.*

*I have nothing to do with up and down of the prices of the script in subject as I have never done regular sale and purchase of any share including the script in subject. Only this period of time IDS share has been sold to meet financial crisis.*

- Para 3

*Neither your Office nor BSE or ROC has reacted on my request/letter of advance information, and suggested to follow the prescribed procedure. I will call on you in the first week of August 2009, on my next visit to India, please note and grant me the exemption till then.*

9. After transfer of the case to me, in the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules a hearing notice dated November 26, 2009 was issued to the Noticee through SEBI-NRO granting the Noticee an opportunity of personal hearing on December 11, 2009 at SEBI, Northern Regional Office, Delhi. As per SEBI-NRO report dated December 03, 2009, the hearing notice was delivered to Mr. Rakesh Kumar Jain, relative of the Noticee.
10. On the scheduled date of the hearing, Mr. Abhishek Jain appeared as Authorised Representative (hereinafter referred to as the “AR”) on behalf of the Noticee and requested for adjournment of the hearing till the end of February, 2010.
11. The Noticee’s request was adhered to and accordingly another opportunity of hearing was granted to the Noticee on February 26, 2010 at SEBI-NRO, Delhi. As per the SEBI-NRO report dated February 15, 2010, the hearing notice was delivered to Mrs. Jain, wife of the Noticee. However, the Noticee failed to appear for the hearing and neither sought any adjournment of the hearing.
12. I am convinced that ample opportunity has been given to the Noticee to explain his case. As per rule 4(7) of the Rules, if any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Officer, she may proceed with the inquiry in the absence of such person after recording the reasons therefore. Despite having been given ample opportunity, the Noticee failed to appear for the hearing. I am, therefore, compelled to proceed with the matter *ex-parte* based on the materials available on record.

## **CONSIDERATION OF ISSUES AND FINDINGS**

13. I have carefully examined the SCN and the documents available on record. I observe that the allegations against the Noticee is that, the Noticee sold 9,79,804 shares accounting for 21.77% of total share capital of the company on BSE and out of this he sold 5,00,000 shares(11.11% of share capital) on April 13, 2007, 3,50,000 shares (7.78% of share capital) on April 16,2007 and 1,00,000 shares (2.22% of share capital) on April 17, 2007 and the disclosure under provisions of PIT Regulations was made on April 24, 2007. Since there was delay in disclosures regarding the same to the Company, the aforesaid disclosure were not in compliance with the provisions of PIT and the Noticee is thereby alleged to have violated Regulation 13 (3), 13 (4) and 13 (5) of PIT Regulation.
14. Now the issues that arise for consideration in the present case are :
- a) Whether the Noticee was holding more than 5% of the shares of IDS prior to sale of the shares?
  - b) Whether the Noticee attracted the disclosure requirements under regulations 13 (3), and 13 (5) of PIT Regulations?
  - c) Whether the Noticee is the director or officer of IDS at the time of change in his shareholding in IDS?
  - d) Whether the Noticee attracted the disclosure requirements under regulations 13 (4), and 13 (5) of PIT Regulations?
  - e) If so, whether the Noticee complied with the above provisions of PIT Regulations?
  - f) Does the non-compliance, if any, on the part of the Noticee attract monetary penalty under section 15 A (b) of SEBI Act?
  - g) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

15. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations, which reads as under:

**Disclosure of Interest of holding by directors and officers and substantial shareholders in listed companies – Initial Disclosure**

**13. Continual Disclosure**

*(3) Any person who holds more than 5% shares or 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.*

*(4) Any person who is a director or officer of a listed company, shall disclose to the company, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 5,000 shares or 2% of total shareholding or voting rights, whichever is lower.*

*(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.*

16. Upon careful perusal of the show cause notice, his beneficiary account, the reply submitted by the Noticee and other materials available on record, I find the following;
- a. The Noticee sold shares through the broker Alankit Assignments Limited.
  - b. As on March 31<sup>st</sup> 2007 the Noticee was holding 25, 78,695 shares constituting 57.30% of share capital of the IDS. From April 2, 2007 to April 20, 2007 Noticee sold total 9,79,804 shares out of which he sold significant quantity of shares on the following days:

<b>No.</b>	<b>Shares sold by the Noticee:</b>	<b>% of share capital sold:</b>	<b>Shares sold on:</b>	<b>Price</b>
1.	5,00,000 shares	11.11%	13-04 2007	5.94
2.	3,50,000 shares	7.78%	16-04-2007	7.12
3.	1,00,000 shares	2.22%	17-04-2007	8.54
<b>TOT:</b>	<b>9,50,000 shares</b>	<b>21.11 %</b>		

- c. The Noticee was the Chairman and Director of the IDS at the relevant time.
- d. The Noticee made disclosure to IDS in Form D under Regulation 13(4) of PIT Regulations, for sale of 9,79,804 shares on April 25, 2007.

**Non compliance of Regulation 13(3), 13(4) and 13(5) of PIT Regulation**

- e. I would like to discuss first whether the Noticee attracted the provisions of Regulation 13(4) of PIT Regulation and if so the violation thereof.
- f. I find from the materials available on record that the Noticee was indeed the Director of IDS at the relevant time i.e. at the time of selling the shares of IDS. Further it is observed that the change in shareholding of the Noticee attracted the provisions of 13(4) of PIT Regulations. Hence the Noticee was required to make the disclosure in Form D and as required under 13(5) such disclosure was to be made within 4 working days as detailed below:

<b>No.</b>	<b>Shares sold by the Noticee:</b>	<b>Shares sold on:</b>	<b>Disclosures to be made to the Company within:</b>
1.	5,00,000 shares	13-04 2007	19-04-2007
2.	3,50,000 shares	16-04-2007	20-04-2007
3.	1,00,000 shares	17-04-2007	23-04-2007
<b>TOT:</b>	<b>9,50,000 shares</b>		

- g. I have perused the documents available on record, I find vide letter dated April 21, 2008 submitted by the Noticee to SEBI where the Noticee has enclosed FORM D submitted under Regulation 13 (4) to the company, the date of intimation to company is shown as 25-04-2007. It is observed that the Noticee communicated to IDS on April 25, 2007 regarding sale of 9,79,804 shares in Form D indicating therein the sale made from April 2, 2007 to April 20, 2007. This is not in terms of Regulation 13(4) as it clearly specifies that as and when there is a change in holding as specified in the Regulation one has to make disclosure within four working days of such change in holding as stated in Regulation 13(5) of PIT Regulation. Noticee sold substantial shares on three dates which triggered the provisions of Regulation 13(4) for making disclosures within the dates as brought out in the table. However the Noticee made disclosure for his total sales only on April 25, 2007. Hence, it is evident that the Noticee failed to comply with the disclosure requirements prescribed under Regulation 13 (4) and 13(5) of PIT Regulations. In reply to the SCN, Noticee in his email dated July 18, 2009 mentioned that he had given intimation to SEBI, BSE and ROC of his intention to sell shares. I have perused the copy of the letter of the Noticee and observe that he intimated of his intention to sell 25, 00,000 shares during the month of September 2006. I find that this was not relevant to the sale of shares made by the Noticee in the month of April 2007. I am, therefore, not inclined to accept the reply of the Noticee. In view of the above, I hold that the Noticee has violated regulations 13(4) and 13(5) of the PIT Regulations.
17. I would now proceed to discuss as to whether the Noticee attracted the provisions of Regulation 13(3) of PIT Regulation and if so the violation thereof.



18. In terms of regulation 13(3) of PIT Regulation, disclosure is required to be made to the company by any person who holds more than 5% shares or voting rights in any listed Company. The disclosure is to be made in Form C about the number of shares or voting rights held and change in such shareholding by any person holding such amount of shares. In my opinion, the above Regulation 13 (3) is not applicable to a person who is a director or officer of a listed company as such persons are specifically covered under sub regulation (4) of Regulation (13) which is enumerated in para 15 above. From the text of the sub- regulations (3) and (4), it can be seen that the disclosure requirements under the said provisions are similar and the obligations of directors/ officers of listed companies under Regulation 13 (4) are in fact onerous than those for other persons under Regulation 13(3) of PIT Regulations. The spirit of Regulation 13 is, as its title suggests, disclosure of interest or holding by directors and officers and substantial shareholders in listed companies. This provision prescribes the initial and continual disclosure requirements of the above said classes of persons. Therefore, it is sufficient as long as a director or officer of a listed company fulfils his disclosure requirements under sub- regulation (4) and he is not expected to file returns in the prescribed forms both as a director/ officer as well as any other person. In the instant case I find that the Noticee is the Director of the Company and falls in the realm of Regulation 13(4) and cannot be held responsible for violating both sub regulations (3) and (4) simultaneously. Infact if the disclosures are required to be made both in 13(3) and 13(4) of PIT Regulations by the same person for the same set of transactions it would tantamount to making of double reporting which would not serve any fruitful purpose. Hence, I absolve the Noticee of the charge of violating Regulation 13 (3) of PIT Regulations.

19. The next issue for consideration as to whether the failure on the part of the Noticee to comply with the provisions of Regulation 13(4) and 13(5) of PIT Regulations attracts monetary penalty under section 15A(b) of SEBI Act, and if so what would be the monetary penalty that can be imposed on the Noticee.
20. The object of the PIT Regulation mandating disclosure of acquisitions beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. In this regard I would like to rely upon the findings of Hon'ble SAT in the matter of Milan Mahendra Securities Pvt. Ltd Vs. SEBI (Appeal No. 66 of 2003 and Order dated November 15, 2006) regarding the importance of disclosure in which SAT has observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist Regulator to effectively monitor the transactions in the market"*. In terms of regulation 13(4) of PIT, disclosure is required to be made to the company within 4 working days. Failure to make disclosure within the stipulated time period provided in the regulation cannot be considered as trivial or of no consequence to be overlooked. After taking all the facts into consideration, it is established that the Noticee has violated the provisions of Regulation 13(4) and 13(5) of PIT Regulations.
21. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, 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...”.*

22. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15A(b) of the SEBI Act, which reads as under:

*15A. 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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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;*

23. While determining the quantum of monetary penalty under section 15A (b), I have considered 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.”*

24. In view of the charges as established, and the facts and circumstances of the case, and the various judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the seriousness of the violation. The Insider Trading Regulations have been framed in order to bring about the transparency in the market and aim at preventing information asymmetry that may preclude any investor from equal treatment and opportunity with respect to the

aforesaid information. Correct and timely disclosures are an essential part of the proper functioning of the securities market and by failure to do so results in preventing investors from taking well-informed decisions. The Noticee, being the Chairman and Director of IDS had more responsibility in ensuring the compliance of disclosure norms. The change in the shareholding of the Noticee and timely disclosure thereof, were of some importance from the point of view of outside shareholders/other investors as that would have prompted them to buy or sell shares of IDS. By not complying with the regulatory obligation of making the disclosure when the change in the shareholding of the Noticee exceeded 2%, he had concealed the vital information from the investors. By virtue of the failure on the part of the Noticee to make the necessary disclosure on time, the fact remains that the shareholders/investors were deprived of the important information at the relevant point of time. Under these circumstances, the compliance with the disclosure requirements under PIT Regulation assumes significance and the Noticee's failure to do so have to be viewed seriously and accordingly, punished in an exemplary manner.

25. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. I find that the transactions took place on more than one day and the Noticee made the disclosure only once that also after a delayed period. Hence the default of the Noticee is repetitive in nature.

## **ORDER**

26. After taking into consideration all the facts and circumstances of the case and material available on record, I hereby impose a monetary penalty of Rs.2,50,000/- (Rupees two lakh fifty thousand only) on the Noticee under Section 15 A(b) which will be commensurate with the default committed by him.
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 shall be forwarded to S. Ramann, OSD- Chief General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), 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 SEBI.

Date: <b>March 22, 2010</b>	<b>BARNALI MUKHERJEE</b>
Place: <b>Mumbai</b>	<b>ADJUDICATING OFFICER</b>