

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. BM/AO- 18 /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**

**International Diamond Services Limited**

(PAN. Not Available)

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 the “**Noticee/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. It was observed during investigation that the Director of the company, Mr. Ashok Kumar Jain (hereinafter referred to as the “**AKJ**”)

**Director**”) dealing through trading member Alankit Assignments Limited sold 9,79,804 shares accounting for 21.77% of the share capital of the company during the investigation period and made disclosure on April 24, 2007. However the Noticee disclosed the said information to BSE only on June 27, 2008.

3. It was alleged that the aforesaid disclosure by the Noticee to the Stock Exchange was in violation of Regulation 13 (6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as ‘**PIT Regulation**’). 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**

4. 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.
5. 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**

6. Show Cause Notice No. EAD-5/VSS/JR/139130/2008 dated September 25, 2008 (hereinafter referred to as “**SCN**”) was issued to

the Noticee through SEBI-NRO under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee 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 the required disclosure in time and the delayed disclosure made by the Noticee was not in compliance with the provisions of PIT Regulation.

7. Since neither acknowledgement of delivery 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.
8. The SCN issued by Speed Post was returned undelivered. The SEBI-NRO in its report dated July 07, 2009 stated that the company no longer existed in the given address- 'A- 4, 3<sup>rd</sup> Floor, Sarvodaya Enclave, New Delhi – 110 026'. However, on inquiry with the residents living in the above address, it was found that the Company had shifted to a new address i.e, '611, Somdutt Chamber- II, 9, Bhikaji Cama Place, New Delhi- 110 066'. Hence, a copy if the SCN was delivered at the new address to Mr. Krishna Shankar, Office Assistant of the Company.
9. However, no reply was received from the Company to the said SCN.
10. 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.

11. As per the SEBI-NRO report dated December 03, 2009, the hearing notice was delivered to Mr. Dharmesh Kumar Aggarwal, employee of the Company.
12. 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.
13. 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. The hearing notice was sent for delivery through SEBI-NRO office on February 02, 2010. As per the SEBI-NRO report dated February 15, 2010, the premises of the Noticee was found to be locked and the notice was delivered to Mrs. Jain, wife of Ashok Kumar Jain. However, the Noticee failed to appear for the hearing.
14. I am convinced that ample opportunity has been given to the Noticee to explain its 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 has failed to avail the opportunity of filing any reply to the SCN and personal hearing. I am, therefore, compelled to proceed with the matter *ex-parte* based on the materials available on record.

## **CONSIDERATION OF ISSUES AND FINDINGS**

15. I have carefully examined the SCN and the documents available on record. I observe that the allegations against the Noticee is that, the Director sold 9,79,804 shares accounting for 21.77% of total share capital of the company during April 2, 2007 to April 20, 2007 and made disclosure to the Company on April 24, 2007. However, the Company disclosed the said information to the Stock Exchange only on June 27, 2008. Since the aforesaid disclosure was not in compliance with the provisions of PIT Regulations the Noticee is thereby alleged to have violated Regulation 13 (6) of PIT.
16. The issues that arise for consideration in the present case are :
- a) Whether the Noticee had violated regulations 13 (6) of PIT Regulation?
  - b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 A (b) of SEBI Act?
  - c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?
17. 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. (1).....  
(2).....

### **13. Continual Disclosure**

- (3) .....  
(4) .....

**Disclosure by company to stock exchanges.**

*(6) Every listed company, within five days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III).*

18. Upon careful perusal of the documents available on record, I find the following;
- a. The Director of the company sold 9,79,804 shares accounting for 21.77% of the share capital of the Company and made disclosure of the same to the Company under Regulation 13 (4) of PIT Regulation on April 25, 2007.
  - b. The Noticee vide letter dated May 7, 2007 disclosed the above information to BSE under Regulation 13 (6) of PIT Regulation which as per the acknowledgement of BSE was received by them on June 27, 2008.

It is clear from the provisions of Regulation 13(6) that it is the duty of every listed company to disclose to all the Stock Exchanges on which the shares are listed the information received under sub regulations (1), (2), (3) and (4) within five days of receipt of such information. In the instant case the director of the company disclosed the information about the sale of the shares to the Noticee under the provisions of regulation 13 (4) of PIT Regulations on April 25, 2007 and the Noticee in turn disseminated the information to BSE which was received by the Stock Exchange on June 27, 2008. Hence as per information available on record disclosure was made by the Noticee to BSE after a year. It is observed the company was listed on VSE and DSE also. However there are no documents available on record to show that the Noticee disseminated the information to other exchanges also where it is listed. Hence in absence of any information available on record and in absence of any reply given by the Noticee it is presumed that no disclosure was made by the Noticee to VSE and DSE.

19. The object of the PIT Regulations 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. Failure to disclose full details on the specific aspects within the stipulated time period provided in the regulation cannot be considered as trivial or of no consequence to be overlooked.
20. In view of the foregoing, I am not inclined to take that the disclosure made by the Noticee is sufficient compliance with the requirements of provisions of regulations 13(6) of PIT. Accordingly, I hold that the Noticee has violated the provisions of the said regulations.
21. The next issue for consideration as to whether the failure on the part of the Noticee to comply with the provisions of Regulation 13(6) 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.
22. 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...*".
23. 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”*. Thus I am of the view that by not disseminating the information to the Stock Exchanges as required under Regulation 13(6) of PIT Regulation the Noticee had violated the provisions of PIT Regulations. Further, it is noted that the Noticee did not reply to the SCN in order to defend itself from the violations as alleged in the SCN. The Noticee also failed to appear for the personal hearing to defend its case. In this regard, I would like to rely upon the findings of the Hon’ble SAT in the matter of Classic Credit Limited Vs. SEBI (Appeal No. 68 of 2003 order dated December 8, 2006) regarding the significance of filing the reply to the SCN, in which it stated that *“the appellant did not file any reply to the second show cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them”*. Hence, based on the aforesaid finding, it is presumed that the Noticee is admitting its non-compliance of the disclosure as required by PIT Regulation. After taking all these facts into consideration, it is established that the Noticee has violated the alleged provisions of PIT Regulations.

24. 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;*



25. 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.”*

26. 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 a listed company had more responsibility in ensuring the compliance of disclosure norms. The change in the shareholding of the Director 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 Director exceeded 2%, the Noticee 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 assumes significance and the Noticee's failure to do so have to be viewed seriously and accordingly, punished in an exemplary manner.

27. In the instant case, 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 from the records that the Noticee did not make the disclosure to BSE within stipulated time and did not make the disclosure to the other Stock Exchanges where its shares are listed. Hence the default is of repetitive nature.

### **ORDER**

28. In view of the above 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. 3,00,000/- (Rupees three lakh only) on the Noticee under Section 15 A(b) which will be commensurate with the default committed by him.
29. 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.

30. 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>