BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO: EAD-2/AO/ 124 /2013]

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

In respect of:

Rotomac Global Private Limited

(PAN: AABCR1441E)

In the matter of

Flawless Diamonds India Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), while examining the alleged irregularity in the trading in the shares of Flawless Diamonds India Limited (hereinafter referred to as 'FDIL') observed that Rotomac Global Private Limited (hereinafter referred to as 'the Noticee), had acquired 40, 00,000 shares i.e. 24% shareholding / voting rights of the FDIL from four entities on October 30 & 31, 2009. The Noticee allegedly failed to comply with regulation 10 & 14 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations').

Appointment of Adjudicating Officer:

2. In view of the above, SEBI initiated adjudication proceedings and appointed the undersigned vide order dated July 16, 2012 as Adjudicating Officer under section 15 I of the SEBI Act read with rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudicating Rules'), to inquire into and adjudge under section 15 H of the SEBI Act for the above violations of SAST Regulations.

Show Cause Notice, Reply of Noticee and Personal Hearing:

3. A Show Cause Notice dated October 08, 2012 (hereinafter referred to as "SCN") was issued to the Noticee under rule 4(1) of the Adjudicating Rules to show cause as to why an inquiry be not held against it and penalty be not imposed under section 15 H of the SEBI Act, for the alleged violations which is given hereunder:

Acquisition of fifteen per cent or more of the shares or voting rights of any company.

10. *No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.*

Timing of the public announcement of offer.

14. *(1) The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein:*

4. The Noticee filed its reply dated October 29, 2012 to the SCN. Thereafter, for the purpose of inquiry, an opportunity of hearing was granted to the Noticee on December 13, 2012 vide notice dated November 29, 2012. The authorized representative of the Noticee appeared before me and made oral submissions. The Noticee's written and oral submissions which are relevant to the allegations, are mentioned below:

(i) We trade in the securities market in ordinary course of business and we are required to give margins in the form of either cash or securities, to our stock broker. That in this context at around October 2009, we had approached the promoters of the FDIL, who are known to us, for the purpose of lending their shares to us to enable us to trade in option and futures by raising margin requirements. Accordingly, a pledge agreement dated October 31, 2009 was executed between us and the promoters of the FDIL.

(ii) The pledge agreements contains margin requirement clause and it was agreed that shares which are in De-mat mode, shall be deposited with us without voting rights) for a period of 3 years. The said agreement was entered between Noticee and the promoter group, under mutual understanding and in friendly relation only.

It was agreed upon that the said shares cannot be sold/transferred/hypothecated further by pledgee except for the purpose of margin requirements with stock brokers.

(iii)The said agreement also contained clause that the voting rights of the said shares would be with the promoters only and pursuant to said agreement, the promoters transferred 20,00,000 share of the FDIL to us on October 31, 2009. That thereafter, we immediately transferred said shares to our stock broker (viz. Nirmal bang Securities Ltd). The promoters of the FDIL had also filed the requisite disclosures regarding the pledge of shares under Regulation 8A of the SAST Regulations with FDIL and with the Stock Exchange. As on date we do not hold any shares of the FDIL. In support of above, the Noticee enclosed copy of said agreement, copy of Demat details of such transfer to broker and copies of disclosures made by the promoters, as Annexure 1, 2 and 3 respectively.

*(**iv**) It is true that the said pledge was not executed / followed as per the procedure of SEBI laws etc., but we do not have the voting rights of the said shares. We have not made any gain or obtained unfair advantage or caused any loss the other and if very narrow view is taken that we have violated the regulation 10 of the SAST Regulations, then it is only technical, procedural, venial, inadvertent and unintentional breach.*

Consideration of Issues and Finding:

5. After taking into account the allegations, reply of the Noticee and other evidences/material available on records, I hereby, proceed further to inquire the case on merit. The issues that arise for consideration in the present case are as under:

(a) Whether the Noticee has acquired 40,00,000 shares (24%) of the FDIL on October 30 & 31, 2009?

(b) If yes, then whether such acquisition is a transfer of shares along with voting rights in favour of the Noticee, or the said acquisition can be treated as valid pledge which carries no voting rights over said shares?

(c) If, the same is a transfer of shares along with voting rights in favour of the Noticee, then whether the Noticee was under an obligation to make public announcement as required under regulation 10 read with regulation 14 of the SAST Regulations.

(d) Whether non compliance of said requirement of public announcement by

the Noticee, is in violation of aforesaid SAST Regulations and attracts the imposition of monetary penalty under section 15 H of the SEBI Act, in light of facts and circumstances of the case.

(e) If yes, then what appropriate monetary penalty is required to be imposed, taking into consideration the factors mentioned in section 15 J of the SEBI Act?

6. I find from the available records that the Noticee received 40,00,000 shares constituting 24% of the total shareholding of the FDIL through off market transfers, from four entities on October 30 & 31, 2009 as shown below:

Date	Name of Transferor	Number of shares	Percentage of capital / shares
October 30, 2009	Sethia Gems Pvt. Ltd. (Entity of Public Category)	10,00,000	6%
October 30, 2009	Manmohan Gems Pvt. Ltd. (Entity of Public Category)	10,00,000	6%
October 31, 2009	Abhishek Jain (Entity of Promoter Group Category)	10,00,000	6%
October 31, 2009	Jalak Jain (Entity of Promoter Group Category)	10,00,000	6%
TOTAL		**40,00,000**	**24%**

7. The shares so acquired by the Noticee, were transferred back to Abhishek Jain and Jalak Jain on December 23, 2009, and to Manmohan Gems Pvt. Ltd and Sethia Gems Pvt. Ltd on March 15, 2010 respectively. The Noticee has never disputed the above fact. The Noticee was required to make a public announcement as required under regulation 10 and 14 of the SAST Regulations upon acquisition of 24% which it failed to do so.

8. The Noticee contended that the said acquisition was made through a pledge agreement with the transferors and it did not acquired voting rights as the said shares were under pledge to it. The shares were pledged for the purpose of providing margin towards its trading in option and futures market and therefore, it is not liable to make any public announcement under regulation 10 read with 14 of the SAST Regulations. I do not accept the contention of the Noticee. The

transferors of the shares did not create any pledge of the said shares in the depositories system in favour of the Noticee. Here, it is necessary to point out that section 12 of the Depositories Act, 1996 and regulation 58 of the SEBI (Depositories and Participants) Regulations, 1996, mandates the detailed procedure / manner for creation of pledge or hypothecation and whereby, if the shares are so pledged, then an entry of said pledge is required to be recorded with the Depositories where the shares are kept in dematerialized form. Such entry in the records of the Depository shall be a evidence of a pledge. The Pledgee does not receive the shares under the pledge on creation of same. Under the law, the pledgor retains the beneficial ownership and the pledgee can acquire the beneficial ownership only on invocation of the pledge.

9. If a precise requirement is prescribed under a special law (securities laws) for a particular segment of contract /pledge etc., then the same must be followed in the manner and fashion as mandated under said special law to give it the sanctity/validity. That means, if there is any agreement of pledge between the parties, then the same needs to be followed in the manner as mentioned in the said Act / Regulations etc. If the same is not followed then it would not amount as valid pledge under the laws. Since, the shares were transferred in the name of the Noticee, it became the beneficial owner of the shares along with voting and other rights attached thereon. The pledgee cannot further transfer/sale the shares unless the pledge is invoked. However, in the present case, the said mandatory procedure for pledge was not followed and apparently by virtue of being not a valid pledge, the shares were further transferred by the Noticee to the same entities as is evident from the Demat statements.

10. From the foregoing, it is established beyond doubt that the Noticee acquired 40,00,000 shares i.e. 24% shareholding / voting rights of the FDIL, from aforesaid four entities on October 30 & 31, 2009 and did not make the public announcement as required under the aforesaid SAST Regulations thereby violated regulation 10 & 14 of the SAST Regulation warranting imposition of monetary penalty under section 15H of the SEBI Act. Section 15 H of the SEBI Act reads as follows:

15H.Penalty for non-disclosure of acquisition of shares and take-overs.-If any person, who is required under this Act or any rules or regulations made thereunder, fails to,-

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
(ii) make a public announcement to acquire shares at a minimum price;
(iii) make a public offer by sending letter of offer to the shareholders of the concerned company;
or
(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer.

he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

11. While determining the quantum of penalty under section 15 H of the SEBI Act, it is important to consider the factors stipulated in section 15J of the 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.

12. The available records did not indicate the quantum of any direct or indirect unfair gain made by the Noticee or any loss/harm caused to the investors/shareholders due to the aforesaid non compliance, nor the default of the Noticee is repetitive in nature. I have noted the submission of the Noticee that the promoters of the FDIL has disclosed to the stock exchanges that their shares were pledged on transferring the shares to the Noticee. However, the non compliance of the Noticee of the SAST regulations needs to be viewed seriously.

Order:

13. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section15 I of the Act and rule 5 of the Rules, I impose a penalty of ₹ 5,00,000/- (Rupees Five Lakh only) under the provisions of section 15 H of the SEBI Act on the Noticee. I am of the

view that the said penalty would commensurate with the violations committed by the Noticee.

14. 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 demand draft shall be forwarded to the Chief General Manager, CFD/DCR, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

15. Copy of this order is being sent to the Noticee and also to the SEBI, in terms of rule 6 of the Adjudication Rules.

Date: January 08, 2013 **P. K. KURIACHEN**

Place: Mumbai **ADJUDICATING OFFICER**