

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 and regulations 44 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with regulation 35 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 in the matter of Classic Diamonds (India) Ltd

In respect of: -

Sl. No.	Noticees / Promoters and promoter group entities	PAN
1	Kumar Chadrakant Bhansali	AACPB2545D
2	Mayank Ramniklal Mehta	AABPM1068P
3	Rita Kumar Bhansali	AEYPB8494H
4	Bhavana K Bhansali	ALEPB7691K
5	Baiju K Bhansali	ALEPB7721N
6	Nirav K Bhansali	AACPB2570L
7	Rupen Bhansali	AITPB6807F
8	Sona Bhansali	AEQPB9664M
9	Ankur Bhansali	ALGPB3442E
10	Gopi K Bhansali	ALOPB8218Q
11	Yogesh K Kaji	AACPK1999C
12	Chandrakant Manilal Bhansali (deceased)	AACPB2072P
13	Urmila C Bhansali (deceased)	AEYPB8493A
14	Kaushik Bhansali (deceased)	ALEPB7722R
15	Diamax Investment & Finance Pvt. Ltd.	AAACD1419P
16	AaroHi Diamonds Pvt. Ltd.	AAACA5988N
17	Hiren Shah	Not available

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1. Classic Diamonds Limited (hereinafter referred to as “Target Company” or “CDL”) is a company registered under the Companies Act, 1956 and its securities are listed in the Bombay

Stock Exchange and the National Stock Exchange. As per the quarterly shareholding pattern of CDL filed with BSE for the quarters ending September 30, 2005 to December 31, 2009, the Noticees have been disclosed as promoters and persons belonging to the promoter group.

2. It was observed by the Securities and Exchange Board of India (SEBI) that the promoters and promoter group entities were together holding 55% or more but less than 75% shares or voting rights in CDL during the quarters ended September 30, 2005 to December 31, 2009. In terms of regulation 11(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (since repealed), noticees could have acquired additional shares or voting rights in CDL only after making a public announcement to acquire shares/voting rights in accordance with the provisions of the Takeover Regulations, 1997. During the examination of the shareholding pattern of the promoters and promoter group entities, it was observed by SEBI that they had acquired shares on several occasions during the period October, 2005 to December, 2009 without making any public announcement for open offer to the shareholders of CDL. Therefore, a Notice dated May 31, 2016 was issued to the Noticees alleging that they have failed to make public announcement for open offer in terms of regulation 11(2) of the Takeover Regulations, 1997, and calling upon them to show cause as to why suitable directions under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 (SEBI Act) and regulations 44 & 45 of the Takeover Regulations, 1997 read with regulations 32 and 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 should not be issued against them.

3. Mr. Kumar C Bhansali, one of the Noticees and Managing Director of CDL, vide letter dated August 9, 2016 replied that the loans given to CDL have been declared as Non-Performing Assets (NPA) by all banks and all commercial and other activities of the company have closed down since November 2011. They may therefore be given reasonable time to gather required information/documents. No further reply was received even after a lapse of long time. Other entities did not respond to the show cause notice. In order to proceed further in the matter, the

Noticees were granted an opportunity of personal hearing on March 20, 2017. Mr. Kumar C Bhansali appeared for hearing and made submissions. He has filed written submissions vide letter dated March 24, 2017. The submissions are as under:

- i. Commercial activities of CDL closed down in November 2011 due to severe financial problems, labour disputes, court cases, etc. Due to such problems and disputes, the company was unable to meet various statutory compliances.
- ii. State Bank of India, which was the lead lender of the company, classified the loans given to the company as NPA and issued notice to it under section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on December 21, 2011.
- iii. Hon'ble High Court of Bombay has passed an order on October 19, 2015 admitting the winding up petition filed by ICICI Bank Ltd. (Company Petition No.317 of 2012) on the ground of deemed inability of CDL to pay its debts within the meaning of sections 433 and 434 of the Companies Act, 1956.
- iv. The trading in the scrip of the company on BSE and NSE has been suspended due to non-payment of fees and other charges.
- v. It was also submitted that Chandrakant M Bhansali died on May 5, 2013, Urmila C Bhansali died on May 1, 2015 and Kaushik Bhansali died on February 24, 2015. Copy of death certificates have been submitted.
- vi. Mr. Kumar C Bhansali submitted that he is technically not capable of understanding the subject matter mentioned in the notice and not equipped to provide the details and clarification with respect to the notice.

4. I have considered the allegations in the show cause notice, reply and submissions made by the Noticees. As Noticees have not filed detailed reply in the matter, I am constrained to proceed with the matter on the basis of documents available on record. It is observed from the quarterly shareholding pattern of CDL filed with BSE for the quarters ending September 2005 to December 2009 that Noticee Nos. 1 to 16 were the promoters and promoter group entities

of CDL and Noticee No. 17 was disclosed as a person belonging to promoter group in the quarter ending March 2008. As per the quarterly shareholding pattern filed by CDL with the stock exchanges, they were together holding 55% or more but less than 75% shares or voting rights in CDL during the quarters ending September 30, 2005 to December 31, 2009. The shareholding pattern also shows that there were changes in shareholding of the promoters and promoter group entities from one quarter to another. The details of the acquisition of shares/voting rights of CDL by the Noticees and their shareholdings in the company are as follows:

Change in shareholding of promoters and promoter group entities

Sl. No.	Pre-acquisition			Acquisition	Post-acquisition		
	Quarter Ending	No. of Shares	%		Quarter Ending	No. of Shares	%
1	Sep 2005	50,29,605	71.85	1,000	Dec 2005	50,30,605	71.87
2	Mar 2007	44,13,874	63.06	7,400	Jun 2007	44,21,274	63.16
3	Jun 2007	44,21,274	63.16	3,000	Sep 2007	44,24,274	63.20
4	Sep 2007	44,24,274	63.20	4,95,100	Dec 2007	49,19,374	65.64
5	Dec 2007	49,19,374	65.64	7,800	Mar 2008*	2,46,04,670	63.96
6	Jun 2008	2,46,01,670	63.95	6,200	Sep 2008	2,46,07,870	63.97
7	Sep 2009	2,46,93,721	64.19	7,52,625	Dec 2009**	2,54,46,346	64.88

* During the quarter ending March 2008, there was a stock split in the ratio of 5:1, due to which number of shares held by the promoter group entities went up from 49,19,374 to 2,45,96,870. They also acquired 7,800 shares in the quarter which increased their shareholding to 2,46,04,670.

**Includes acquisition of 7,50,000 equity shares on October 09, 2009 by promoters pursuant to conversion of 7,50,000 warrants allotted to them on preferential basis on August 17, 2009.

5. Regulation 11 of the Takeover Regulation, 1997 dealt with consolidation of holdings and provided thresholds of shareholding/voting rights in a target company for making public announcements. In terms of regulation 11(1) of the Takeover Regulations, 1997, an acquirer and persons acting in concert holding 15% or more but less than 55% of shares or voting rights

were permitted to acquire up to 5% shares/voting in the company in a financial year subject to the condition that the post-acquisition shareholding in the company shall not exceed 55%. Once the shareholding of acquirers and persons acting in concert with him reach 55%, then any further acquisition by acquirers is covered under regulation 11(2) of the Takeover Regulations, 1997 which deals with acquirers and persons acting in concert with him who together hold 55% or more but less than 75% of the shares/voting rights in a target company. The shareholding of the Noticees in the instant case falls under this category. Regulation 11(2) has gone through several amendments during the period when several bouts of purchases of shares were made by the Noticees. The regulation as it prevailed during the period December 30, 2004 to May 25, 2006 is as under.

Regulation 11(2) - "An acquirer, who together with persons acting in concert with him has acquired, in accordance with the provisions of law, 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, may acquire either by himself or through persons acting in concert with him any additional share or voting right, only if he makes a public announcement to acquire shares or voting rights in accordance with these regulations.

Provided that no acquirer shall acquire shares or voting rights, through market purchases and preferential allotment pursuant to resolution passed under section 81 of the Companies Act, 1956 or any other applicable law, 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 more than fifty five percent of the voting rights in the company;

Provided further that if the acquirer has acquired shares or voting rights through such market purchases or preferential allotment beyond fifty five percent of the voting rights in the company, he shall forthwith disinvest the shares acquired in excess of fifty five percent and shall be liable for action under these Regulations and the Act."

6. The aforesaid regulation was substituted by SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2006 which came into force on May 26, 2006. After substitution the regulation read as under:

Regulation 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 persons acting in concert with him any additional shares or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations.

Provided that in case where target company had obtained listing of its shares by making an offer of at least ten percent (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 percent (75%)' the words and figures 'ninety percent (90%)' were substituted."

7. The SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2008, with effect from October 30, 2008, inserted the words "entitling him to exercise voting rights" after the words "additional shares" and it also inserted second proviso to the sub-regulation. Subsequent to the amendment the regulation read as under:

Regulation 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 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 case where target company had obtained listing of its shares by making an offer of at least ten percent (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 percent (75%)' the words and figures 'ninety percent (90%)' were substituted.

Provided further that such acquirer may, 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 up to 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 to a buyback 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%).”

8. It is observed from the above that the provision of regulation 11(2) of the Takeover Regulations, 1997 broadly remained the same during the period of aforesaid acquisitions. It mandated that an acquirer, who together with persons acting in concert holding 55% or more but less than 75% shares or voting rights in a target company, shall acquire any additional share or voting right in that company only upon making a public announcement for open offer. The second proviso inserted in regulation 11(2) with effect from October 30, 2008 permitted acquisition of shares or voting rights up to 5% even by these category of acquirers (who were holding 55% or more but less than 75% shares/voting rights in the company) without making any public announcement subject to the conditions that (i) the acquisition is through open market purchase in normal segment on the stock exchange or it is pursuant to buy back of shares by the target company, and (ii) the post-acquisition shareholding of the acquirer along with persons acting in concert does not goes beyond 75%.

9. It is observed that the Noticees acquired additional shares during the December 2005, June 2007, September 2007, December 2007, March 2008 and September 2008 quarters. The acquisition of 7,50,000 equity shares on October 09, 2009 by promoters was pursuant to conversion of 7,50,000 warrants allotted to them on preferential basis. The said acquisition is not covered under the second proviso which came into force on October 30, 2008. As the Noticees have not made any public announcement pursuant to these acquisitions, they have

violated regulation 11(2) of Takeover Regulations, 1997. Having found so, it is necessary to consider as to whether this is a fit case to direct the Noticees to make a public announcement for open offer or to issue any other direction for such contravention, as stipulated in the Takeover Regulations.

10. In the present case, Mr. Kumar C Bhansali submitted for the first time during the hearing that Hon'ble High Court of Bombay in the Company Petition No.317 of 2012, filed by ICICI Bank Ltd., was pleased to pass an order on October 19, 2015, admitting the winding up petition against Classic Diamonds Limited for its inability to pay debts. It is thus observed that winding up proceedings against the Target Company have commenced. In the case of a company against which winding up proceedings have commenced, by virtue of provisions of section 536(2) of the Companies Act, 1956 (corresponding provision in the Companies Act, 2013 is section 334(2)), any transfer of shares in the company or change in status of its members would be void, unless the company court orders otherwise. In this context, the provisions of section 32 of the SEBI Act, 1992 are also relevant for consideration. The same is extracted as below:

“32. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”

11. From the above provisions, it is seen that the provisions of SEBI Act and the Companies Act are complementary to each other and should co-exist in their respective spheres without conflicting with each other. An open offer, if directed at the winding up stage, will result in a transfer of shares of the Target Company and a change in the status of its members. Thus, on a total evaluation of the facts of this case in the light of the provisions cited above, I am of the view that this is not a fit case to direct an open offer at this point of time. Incidentally, I also note that the law has been subsequently amended which enabled an acquirer to make creeping acquisition up to five percent in a financial year. As the issuance of a direction to make an open offer is being ruled out, I have considered the suitability of issuance of other directions indicated in regulation 44 of the Takeover Regulations, 1997. Accordingly, I am of the view that a direction debarring the entities from accessing and dealing in securities market for a limited period of one year will be appropriate in the specific facts of the case.

12. It is has been submitted that Chandrakant Manilal Bhansali passed away on May 5, 2013, Urmila C Bhansali on May 1, 2015 and Kaushik Bhansali on February 24, 2015. Consequently, the present proceedings against them shall stand abated.

Directions

13. In view of the above, in exercise of powers conferred upon me under sections 11, 11B of the Securities and Exchange Board of India Act, 1992 and regulation 44 of Takeover Regulations, 1997 read with regulation 35 of the Takeover Regulations, 2011, I hereby direct that Mr. Kumar Chandrakant Bhansali, Mr. Mayank Ramniklal Mehta, Ms. Rita Kumar Bhansali, Ms. Bhavana K Bhansali, Mr. Baiju K Bhansali, Mr. Nirav K Bhansali, Mr. Rupen Bhansali, Ms. Sona Bhansali, Mr. Ankur Bhansali, Mr. Gopi K Bhansali, Mr. Yogesh K Kaji, Diamax Investment & Finance Pvt Ltd, Aarohi Diamonds Pvt Ltd. and Mr. Hiren Shah are restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities, either directly or indirectly or being associated with the securities market in any manner whatsoever, for a period of one year from the date of this Order.

14. Copy of this order shall also be served upon the stock exchanges and depositories for ensuring compliance with the above direction.

Date: September 22, 2017
Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER