

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(2)(j), 11(4) AND 11B OF THE SEBI ACT READ WITH SECTION 12A OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956.

IN THE MATTER OF NON-COMPLIANCE WITH THE REQUIREMENT OF MINIMUM PUBLIC SHAREHOLDING BY LISTED COMPANIES

IN RESPECT OF INTERNATIONAL CONSTRUCTIONS LIMITED –

BACKGROUND –

- 1.1 International Constructions Limited (“**ICL**”) is a listed company, which was incorporated under the Companies Act, 1956. The shares of ICL are listed on National Stock Exchange of India Limited (“**NSE**”) and Calcutta Stock Exchange.

AD-INTERIM EX PARTE ORDER DATED JUNE 4, 2013 –

- 1.2 Vide an Order dated June 4, 2013 (“**Interim Order**”), SEBI issued the following directions *inter alia* against ICL and its Directors, Promoters and Promoter Group, on the basis of details furnished by NSE, for having failed to meet the minimum public shareholding requirement by June 3, 2013, –

“17. Hence, in exercise of the powers conferred upon me by virtue of Section 19 and under Sections 11(1), 11(2)(j), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) read with Section 12A of Securities Contracts (Regulation) Act, 1956 (“**SCRA**”), pending passing of the final order in these cases, I hereby:

- a. Direct freezing of voting rights and corporate benefits like dividend, rights, bonus shares, split, etc. with respect to the excess of proportionate promoter/promoter group shareholding in the above mentioned non-compliant companies, till such time these companies comply with minimum public shareholding requirement. ...
- b. Prohibit the promoter/promoter group and directors of these non-compliant companies from buying, selling or otherwise dealing in securities of their respective companies, either directly or indirectly, in any manner whatsoever, except for the purpose of complying with minimum public shareholding requirement till such time these companies comply with the minimum public shareholding requirement.

- c. *Restrain the shareholders forming part of the promoter/promoter group in the non – complaint companies from holding any new position as a director in any listed company, till such time these companies comply with the minimum public shareholding requirement.*
- d. *Restrain the directors of non – compliant companies from holding any new position as a director in any listed company, till such time these companies comply with the minimum public shareholding requirement. ...”*

CONFIRMATORY ORDER DATED OCTOBER 15, 2015 –

- 1.3 Subsequent to the aforementioned Interim Order, ICL filed written submissions before SEBI vide letters dated June 14, 2013 and July 7, 2015 (after availing of an opportunity of personal hearing before SEBI on July 3, 2015). ICL, while informing SEBI that the shares of the Company stood suspended from NSE w.e.f. November 2001, submitted that as and when such suspension of trading is revoked by NSE, it will ensure compliance with minimum public shareholding requirement.
- 1.4 After considering the aforementioned submissions, SEBI vide an Order dated October 15, 2015 (“**Confirmatory Order**”) issued the following directions against ICL and its Directors, Promoters and Promoter Group –
 - 6. *“The Company’s submission is that it could not comply with the MPS norms as trading in its shares were suspended by NSE and therefore, NSE was not providing the facility for carrying out an Offer for Sale (“**OFS**”). The Company has assured that once suspension is revoked, it would immediately comply with the requirements and ensure MPS of 25%. In this regard, I note that the trading was suspended during the year 2001 and the Company had adequate time of three years (i.e. from June 4, 2010 till June 3, 2013) to comply with the MPS requirements as mandated under the statute. It appears that the Company has not taken steps towards compliance. However, the Company is at liberty to approach NSE.*
 - 7. ...
 - 8. *Accordingly, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1), 11(2)(j), 11(4) and 11B thereof and Section 12A of the Securities Contracts (Regulation) Act, 1956, hereby confirm the directions issued vide the Interim Order dated June 4, 2013 against the Company, ICL Limited, its Directors, Promoters and Promoter Group.”*

SECURITIES APPELLATE TRIBUNAL ORDER DATED NOVEMBER 10, 2017 AND SEBI ORDER DATED JULY 20, 2018 –

- 1.5 During the intervening period, ICL made an application for revocation of suspension of trading of its shares before NSE. Vide a letter dated August 17, 2017, NSE had rejected the aforesaid application *inter alia* stating that “*there is a disciplinary action against the Promoters of the Company in force for non-compliance with minimum public shareholding requirement.*”
- 1.6 The aforementioned NSE letter dated August 17, 2017, was challenged by ICL and its Directors before the Hon’ble Securities Appellate Tribunal (“**SAT**”) in *Appeal No. 299 of 2017 – International Constructions Limited vs. SEBI*. The Hon’ble SAT vide an Order dated November 10, 2017, directed as under –
2. “*... The appellant is permitted to withdraw the appeal with liberty to make a representation to SEBI. If appellant makes a representation, then SEBI shall consider the said representation and pass appropriate order in accordance with law.*”
- 1.7 Consequent to the aforementioned SAT Order, ICL filed representations dated December 28, 2017 and April 3, 2018 and written submissions dated June 27, 2018 (after availing of an opportunity of personal hearing before SEBI on June 18, 2018) before SEBI.
- 1.8 It may be mentioned that NSE vide a letter dated April 25, 2018 had rejected ICL’s application for revocation of suspension in trading in its shares on the basis of an adverse site-visit Report which stated:
1. “*There was no name board of the Company at the office.*
2. *It was informed that there was just one employee in the Company who was also not present.*”
- 1.9 Subsequently, vide a Circular dated July 6, 2018 having ref. no. 0764/2018, NSE notified that the suspension in trading of the shares of ICL will be revoked with effect from July 16, 2018. Further, the Circular also stated that as per the SEBI (Prohibition on Raising Further Capital from Public and Transfer of Securities of Suspended Companies) Order, 2015 dated July 20, 2015, the entire Promoter shareholding i.e. 31,34,840 equity shares, would be under lock-in upto October 15, 2018.

1.10 After considering the aforementioned representations/submissions (referred to in paragraph 1.7), SEBI vide an Order dated July 20, 2018 issued the following directions against ICL and its Directors –

3.1 “... having due regard to the revocation of suspension of trading by NSE subject to the stipulation of lock-in of the entire promoter shareholding upto October 15, 2018, ICL is directed to take necessary steps in accordance with law, to ensure compliance with the requirement of minimum public shareholding, as directed by SEBI in its Interim Order dated June 4, 2013 and Confirmatory Order dated October 15, 2015.”

1.11 Pursuant to the SEBI Order dated July 20, 2018, ICL submitted a representation dated February 5, 2019 to SEBI stating:

- A. The suspension of trading of the shares of ICL was revoked by NSE on July 16, 2018 vide NSE Order no. NSE/CML/ 3825 dated July 6, 2018.
- B. For ensuring compliance with minimum public shareholding requirement, Anil Kumar Sethi – a Promoter of ICL had offered 4,09,370 shares of the Company under the ‘Offer for sale’, which was carried out on January 24–25, 2019. Pursuant to the OFS, the public shareholding of ICL now stands at 25%.
- C. Accordingly, ICL has complied with minimum public shareholding norms on January 25, 2019 through the OFS route/method.

FINDINGS –

2.1 I have considered the representation dated February 5, 2019 as made by ICL along with all relevant material available on record. I note that vide Notifications dated June 4, 2010 and August 9, 2010, the Ministry of Finance amended the Securities Contracts (Regulation) Rules, 1957 (“**SCRR**”) including Rule 19A to provide for minimum and continuous public shareholding requirements in listed companies as it was felt that a dispersed shareholding structure was essential for the sustenance of a continuous market for listed securities, to provide liquidity to the investors and to discover fair prices. The aforementioned Notifications mandated all listed companies (other than PSUs) to have minimum public shareholding of 25%. Further, in listed companies where the public shareholding was less than 25%, such companies were mandated to raise the same to the minimum of 25% by June 3, 2013.

2.2 SEBI Circular dated November 30, 2015 issued in pursuance of Regulation 38 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [since superseded by SEBI Circular (SEBI/HO/CFD/CMD/CIR/P/43/2018) dated February 22, 2018] provided for the

following methods that can be used to comply with the requirements of Rules 19(2)(b) and Rule 19A of the SCRR:

- i. Issuance of shares to public through prospectus;*
- ii. Offer for sale of shares held by promoters to public through prospectus;*
- iii. Sale of shares held by promoters through the secondary market in terms of SEBI circular CIR/MRD/DP/05/2012 dated February 1, 2012;*
- iv. Institutional Placement Programme (IPP) in terms of Chapter VIIIA of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009;*
- v. Rights Issue to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, that may arise from such issue;*
- vi. Bonus Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, that may arise from such issue;*
- vii. Sale of shares held by promoters/promoter group up to 2% of the total paid-up equity share capital of the listed entity in the open market, subject to conditions specified under the Circular SEBI/HO/CFD/CMD/CIR/P/43/2018 dated February 22, 2018;*
- viii. Allotment of eligible securities under Qualified Institutions Placement in terms of Chapter VIII of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (added vide SEBI Circular SEBI/HO/CFD/CMD/CIR/P/43/2018 dated February 22, 2018);*
- ix. Any other method as may be approved by SEBI on a case to case basis. For this purpose, the listed entities may approach SEBI with appropriate details ...*

2.3 In the instant proceedings, ICL had resorted to the OFS mechanism in terms of SEBI Circular CIR/MRD/DP/18/2012 dated July 18, 2012 (as amended upto June 27, 2017 and which superseded SEBI Circular CIR/MRD/DP/05/2012 dated February 1, 2012) and SEBI Circular SEBI/HO/MRD/DP/CIR/P/2016/135 dated December 16, 2016 to reduce Promoter shareholding.

- 2.4 The shareholding pattern of ICL as obtained from the NSE website as on June 30, 2015 (which was also mentioned in the *Confirmatory Order*) and as on January 25, 2019, is reproduced below –

SHAREHOLDING PATTERN OF ICL			
	DATE	PROMOTER GROUP SHAREHOLDING IN %	PUBLIC SHAREHOLDING IN %
1.	30.06.2015	86.27	13.73
2.	25.01.2019 [#]	75.00	25.00
[#] As on 31.12.2018, the Public shareholding stood at 13.73% while the Promoter and Promoter Group shareholding was at 86.27% (Source – NSE website).			

- 2.5 From the preceding paragraph, it is observed that ICL is now compliant with the requirement of minimum public shareholding as stipulated under Rule 19A of the SCRR with effect from January 25, 2019 i.e. when the public shareholding in the Company increased to 25%. Vide an e-mail dated March 8, 2019, NSE also confirmed to SEBI that ICL had achieved minimum public shareholding compliance on January 25, 2019 through the OFS method permitted by SEBI. I note that although ICL had ensured compliance with minimum public shareholding requirement, it has been done with a delay and it is for SEBI to consider if any action in accordance with law is warranted for delayed compliance.
- 2.6 Considering the fact that the Promoter and Promoter Group's shareholding in ICL has been brought down to 75% thereby ensuring minimum public shareholding at 25%, I am of the considered view that the directions issued against ICL and its Directors, Promoters and Promoter Group vide the *Interim Order* read with the *Confirmatory Order* and the *Order* dated July 20, 2018, need not be continued.

ORDER –

- 3.1 I, in exercise of the powers conferred on me under Sections 11(1), 11(2)(j), 11(4) and 11B of the SEBI Act read with Section 12A of the Securities Contracts (Regulation) Act, 1956, hereby revoke the directions issued vide the *Interim Order* read with the *Confirmatory Order* and the *Order* dated July 20, 2018 against ICL and its Directors, Promoters and Promoter Group, with immediate effect.
- 3.2 This Order shall come into force with immediate effect.

- 3.3 A copy of this Order shall be served on the recognized Stock Exchanges and Depositories for their information and necessary action.

Place: Mumbai
Date: May 24, 2019

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA