# INTERNATIONAL CONSTRUCTIONS LIMITED

Jan 09, 2020

To

M/s National Stock Exchange of India Ltd.
Exchange Plaza, Bandra-Kurla Complex
Bandra (E). Mumbai - 400 051

Dear Sirs,

**Sub:** Adjudication Order against Show Cause Notice under Rule 4(1) of the Securities contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating officer) Rules, 2005 in the matter of Compliance for MPS – Intimation – reg.

**Ref:** SEBI Adjudication Order – **'Order/MC/VS/2019-20/6229' Dated – December 24, 2019**

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We are glad to inform you that we have been issued an adjudication order No. Order/MC/VS/2019-20/6229 dated 24.12.2019 by the Adjudicating officer of SEBI in the matter Compliance for Minimum Public Shareholding not in time and we enclose herewith the said order for your reference.

Further the company has immediately on 27.12.2019 paid the penalty of Rs. 5 Lakhs and informed the Enforcement Department of SEBI the same and accordingly this matter has been closed

Kindly take note of the above.

Thanking you

Yours faithfully,
For International Constructions Limited

**S Nakkiran**
AGM & Company Secretary
Encl: As above.

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER: Order/MC/VS/2019-20/6229]**

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In respect of -

**International Constructions Limited**

[PAN: AAACI5686F]

having address at Golden Enclave, Corporate Block, Tower B1, 5th Floor, HAL Old Airport Road,

Bengaluru – 560 117, (Karnataka)

*In respect of International Constructions Limited*

*in the matter of Non-Compliance with Minimum Public Shareholding Requirements*

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") examined compliance with minimum public shareholding norms in the scrip of International Constructions Limited ("**ICL**" or "**the company**" or "**the Noticee**"). Examination revealed that the Noticee, whose shares were listed on the National Stock Exchange of India Limited ("**NSE**") and Calcutta Stock Exchange ("**CSE**"), was non-compliant with minimum public shareholding norms stipulated in Clause 40A of the erstwhile Listing Agreement read with Regulation 38 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**") and Rule 19A of the Securities Contracts (Regulation) Rules, 1957 ("**SCRR**") within the stipulated timeframe of three years from the date of commencement of the applicable continuous listing requirement in Rule 19A of the

SCRR, introduced by the Securities Contracts (Regulations) (Amendment) Rules, 2010 with effect from June 4, 2010.

2. SEBI, in exercise of powers conferred upon it under Sections 11(1), 11(2)(j), 11(4) and 11(B) of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the "***SEBI Act***") read with Section 12 of the Securities Contracts (Regulation) Act, 1956 ("**SCRA**") had passed an Order WTM/PS/08/CFD/JUNE/2013 on June 04, 2013 (hereinafter be referred to as, the "***Order dated June 04, 2013***") listing out 105 companies, including the Noticee, which were required to comply with Minimum Public Shareholding (hereinafter be referred to as, the "***MPS***") requirement by June 03, 2013 but had failed to do so. Therefore, pending compliance with minimum public shareholding requirements as mandated by SCR Rules, the following interim directions were issued by SEBI *vide* Order dated June 04, 2013:-

    (a) freezing of voting rights and corporate benefits with respect to excess of proportionate promoter / promoter group shareholding in the non-compliant companies,
    (b) prohibiting the promoters / promoter group and directors of the 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,
    (c) restraining the shareholders forming part of the promoter / promoter group in the non-compliant companies from holding any new position as a director in any listed company,
    (d) restraining the directors of non-compliant companies from holding any position as a director in any listed company.

3. SEBI, thereafter, passed an order WTM/PS/CFD/OCT/2015 dated October 15, 2015 (hereinafter be referred to as, the "***Order dated October 15, 2015***") wherein, it noted that the Noticee had not complied with the MPS requirements till date. On account of such continuous non-compliance, SEBI, in exercise of powers conferred

upon it under Section 19 read with Section 11(1), 11(2) (j), 11(4) & 11B of the SEBI Act and Section 12A of the SCRA, confirmed the directions issued in respect of the Noticee *vide* Order dated June 04, 2013.

4. Thereafter, SEBI passed an order WTM/GM/CFD/39/2018-19 dated July 20, 2018 (hereinafter be referred to as, the "***Order dated July 20, 2018***") in compliance with the Order of the Securities Appellate Tribunal dated November 10, 2017 in Appeal No. 299 of 2017. In the Order dated July 20, 2018, SEBI observed that the Noticee was yet to ensure compliance with MPS requirement as stipulated under Rule 19A of SCR Rules and directed the Noticee to take necessary steps in accordance with law to ensure compliance with MPS requirements.

5. The Company Secretary of the Noticee informed SEBI *vide* e-mail dated February 05, 2019 that the MPS requirements have been complied by the Noticee on January 25, 2019 and confirmed that the public shareholding in the Noticee had then reached 25%. The Company Secretary of the Noticee, therefore, requested SEBI to remove the strictures passed by SEBI against the Noticee and its promoters and directors *vide* Order dated June 04, 2013 and October 15, 2015. NSE also informed SEBI vide e-mail dated March 8, 2019 that the Noticee had complied with the MPS requirements by way of Offer for Sale (OFS), which was one of the methods permitted under SEBI Circulars.

6. Finally, vide order dated May 24, 2019, the directions issued in respect of the Noticee, its directors, and shareholders belonging to its promoter group vide interim order, confirmatory order and order dated July 20, 2018 were revoked.

7. Adjudication proceedings were initiated with respect to the Noticee for alleged violation of Rule 19A of the SCRR, Clause 40A of the erstwhile Listing Agreement read with Regulation 38 of the LODR Regulations, as the Noticee failed to comply with minimum public shareholding requirements between June 4, 2013 and January 25, 2019 i.e. a period of 5 years and 7 months.

**APPOINTMENT OF ADJUDICATING OFFICER**

8. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as "**AO**") under Section 15-I of the SEBI Act, 1992 ("**SEBI Act**") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**"), and Section 23I of the SCRA read with Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 ("**SCRA Adjudication Rules**"), vide order dated August 28, 2019, to inquire into, and adjudge under Section 23E of the SCRA, the alleged violations of the provisions of – (A) Clause 40A of the erstwhile listing Agreement read with Regulation 38 of the LODR Regulations and (B) Rule 19A of the SCRR – by the Noticee.

9. The appointment of the undersigned as AO was communicated vide order dated September 11, 2019.

**SHOW CAUSE NOTICE, REPLY AND HEARING**

10. Show Cause Notice No. EAD/EAD5/MC/CB/2019/24542 dated September 19, 2019 (hereinafter referred to as "**SCN**"), was issued to the Noticee in terms of Rule 4 (1) of the SCRA Adjudication Rules read with Section 23-I of the SCRA, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee in terms of Section 23E of the SCRA, for alleged violations of –

    (A) Clause 40A of the erstwhile listing Agreement read with Regulation 38 of the LODR Regulations and

    (B) Rule 19A of the SCRR

11. The allegations levelled against the Noticee in the SCN are summarized as follows:-

    (a) An amendment was introduced in the SCRR vide notification of Securities Contracts (Regulation) (Second Amendment) Rules, 2010 wherein Rule 19A was inserted in the SCRR, *inter alia* mandating every listed company, other

than public sector company, to maintain public shareholding of at least 25% as a continuous listing requirement.

(b) Vide interim order dated June 4, 2013, certain directions were issued vis-à-vis the Noticee and its directors and shareholders belonging to promoter/promoter group as the Noticee had failed to comply with minimum public shareholding requirements mandated in the SCRR by the stipulated date of June 4, 2013. The said directions were maintained through confirmatory orders dated October 15, 2015, and July 20, 2018 as the Noticee had not complied with the minimum public shareholding requirements by then.

(c) SEBI was informed by the Company Secretary of the Noticee *vide* e-mail dated February 05, 2019 that the MPS requirements had been complied by the Noticee on January 25, 2019 and confirmed that the public shareholding in the Noticee had then reached 25%. The Company Secretary of the Noticee, therefore, requested SEBI to remove the strictures passed by SEBI against the Noticee and its promoters and directors *vide* Order dated June 04, 2013 and October 15, 2015.

(d) It was observed from the shareholding patterns filed with NSE by the Noticee that the MPS requirement was complied with by the Noticee on January 25, 2019. It was, therefore, alleged that the Noticee delayed compliance with MPS requirement by a period of 5 years and 7 months.

(e) In view of the aforesaid, it was alleged that the Noticee, by delaying compliance with MPS Norms as mandated under SCR Rules, had violated Clause 40A of the erstwhile Listing Agreement read with Regulation 38 of the LODR Regulations read with Rule 19A of the SCR Rules.

12. Vide e-mail dated October 29, 2019, the Noticee made the following submissions in response to the SCN:-

(a) The Noticee with its Registered Office at Bangalore is listed on the National Stock Exchange (NSE). It has been recently delisted from the Calcutta Stock Exchange vide CSE Ltr No. CSE/LD/14749/2019 dated 22.7.2019.

(b) The shares of the company were suspended from trading in NSE from the year 2001 onwards for non-compliance of certain conditions of the erstwhile listing agreement during the years 2000 and 2001. The said non-compliances were due to resignation of the Secretarial In-charge concerned.

(c) The files were shifted to Bangalore after shifting of the Registered Office of the Company from Kolkata to Bangalore vide ROC letter dated 24.03.2006.

(d) In 2010, the Noticee's then Company Secretary, Mrs. Bhargavi Reddy had visited NSE and had a discussion with the officials of NSE regarding revocation of suspension. We were advised at that time that if the Company submits all listing compliances for a period of 1 year, then NSE would revoke the suspension. Although the Noticee complied with all the required compliances, NSE did not revoke the suspension after the said period of one year.

(e) The Noticee tried to make the Offer for Sale to comply with the MPS requirements. However during the telephonic discussion with NSE in February 2013, through the Noticee's representative Ms. Deepti of Makarand Joshi & Co., Practicing Company Secretary, the Noticee was informed that since the trading of Company's shares were under suspension, the Offer for Sale portal of NSE for offloading the Noticee's promoters' shares for the purpose of achieving the mandatory requirement of minimum public holding upto 25% could not be used. Further the company is not one of top 100 companies based on market capitalization, making the Company ineligible to use Offer for Sale mechanism. If the Offer for Sale mechanism of NSE cannot be used by the Noticee, it requested NSE vide letter dated 26.2.2013 to advise as to whether the Noticee can undertake off market sale of promoters' shares to some identified people from general public for reducing the Noticee's promoters' holding but the Noticee have not received any advice from NSE.

(f) SEBI vide notification dated June 04, 2010 amended Rule 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 as per which all listed entities must maintain a minimum public shareholding of 25% of the total paid up capital of the company and thereafter passed an interim order no

WTM/PS/08/CFD/JUNE/2013 dated 04.06.2013 with respect to 105 listed companies, including the Noticee, which could not comply with the requirement of Minimum Public Shareholding norms.

(g) Again requests and reminders were sent to NSE for the revocation and finally the Noticee met Mr. Gandhi of NSE on 12th May, 2014 during which time a list of non- compliances were provided by the exchange officials and the Noticee complied with all of them vide their letter dated 10.9.2014. However the exchange did not revoke the suspension of the securities from trading.

(h) During the personal hearing before Whole Time Member SEBI on 3.7.2015 the Noticee submitted inability to comply with the MPS requirements as the Noticee's shares were under suspension. SEBI pursuant to the personal hearing passed a confirmatory order no WTM/PS/68/CFD/OCT/2015 dated 15.10.2015 confirming the interim order dated 04.06.2013 as per which the Noticee were directed to approach NSE for doing the needful.

(i) After this Order, pursuant to an exchange of series of letters between the company and NSE, vide mail dated 14.09.2016, the Noticee was called upon to remit a revocation processing fee of Rs.1,50,000/-. Immediately thereafter, vide another email from the NSE, the Noticee was asked to ignore the aforementioned mail dated 14.09.2016 and were informed that intimation regarding the revocation shall be provided later.

(j) Thereafter on 29.12.2016 the Noticee received another mail from NSE calling upon the Noticee to furnish the financial ratios and further advising to make payment of Rs.1,50,000/- towards revocation fee. In compliance with the said communication dated 29.12.2016, vide mails dated 29.12.2016 and 3.1.2017 the financial ratios were furnished and the Noticee also made payment of Rs.1,50,000/- towards revocation fee on 2.1.2017.

(k) NSE raised further queries after this with pointed reference to the non-compliance of the MPS and the Noticee was submitting replies to all the queries raised by NSE regularly without any delay.

(l) Pursuant to the submission of all our replies, NSE issued a communication dated 17.08.2017 informing the Noticee as under-

"*After due consideration of your request for revocation, it is decided not to revoke the suspension of trading due to the following:*
*There is a disciplinary action against the promoters of the Company in force for non-compliance with minimum public shareholdings requirement.*

*This Exchange shall be constrained to consider your Company for Compulsory Delisting under SEBI (Delisting of Equity Shares) Regulations, 2009 and promoters of your Company shall attract consequences of compulsory delisting as provided under the aforesaid Delisting Regulations."*

(m) Under the said circumstances, on one hand, the Noticee was disabled from achieving MPS of 25% as prescribed under the SCRR due to suspension of trading in shares by NSE and on the other hand NSE has refused revocation of suspension of the trading in shares of the Noticee even after receiving the revocation fee which was advised by it and after meeting all the requirements as advised by the NSE over a long period of time on the ground that there was an Order dated 15.10.2015 passed by SEBI against the promoters of the Company for non-compliance with MPS requirements in force.

(n) The Noticee thereafter filed an appeal before the Securities Appellate Tribunal on 9.10.2017 requesting that the Order of NSE dated 17.08.2017 be set aside. After the matter was argued for some time before SAT, Noticee's counsel sought to withdraw the appeal with liberty to make a representation to SEBI in relation to the issue regarding compliance of the minimum public shareholding requirement.

(o) Thereafter Noticee made a representation to SEBI to direct NSE to revoke the suspension so that the Noticee could comply with the MPS requirements.

(p) During the personal hearing before the Whole Time Member, the Noticee explained that it was unable to comply with the MPS requirements as the shares were under suspension and since online facility cannot be provided by NSE as the stock was under suspension. After listening to their representation, the Member was pleased to direct the NSE to revoke the suspension.

(q) NSE finally on July 16, 2018 vide order No. NSE/CML/3825 dated 6.7.18 revoked the suspension of trading of the Noticee's equity shares.

(r) After the said revocation by NSE, the Whole Time Member was pleased to dispose of the representations filed by the Company vide his Order dt. 20.7.18.

(s) After the above, the Noticee immediately took steps and proposed an 'Offer for Sale' (OFS) by Zoom Industrial Services Ltd. ('ZISL'), the Noticee's promoter company in order to achieve the said MPS and had paid NSE Rs. 2,16,000/- on August 08, 2018 towards processing fees for same. But HDFC Securities Limited with whom ZISL has a Trading account, after a continuous follow up for more than 3 months, declined the request of Zoom on the ground that it has no experience and the required systems.

(t) Subsequently, Mr. Anil Kumar Sethi, another promoter offered the required 4,09,370 shares of our company under OFS and it took another month to complete his KYC formalities and finally the said OFS was carried out on 24th / 25th January, 2019 thus complying with the requirement of MPS by us on 25.1.2019.

(u) After due information to SEBI on compliance of MPS requirement, the Whole Time Member of SEBI by his order dated 24.5.2019 revoked the directions issued by SEBI 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.

(v) The Noticee could not comply with the requirements immediately in 2013 only because Noticee's shares were under suspension, repeated efforts to revoke the suspension were not fruitful and the delay in compliance was beyond Noticee's efforts.

13. Vide Hearing Notice No. SEBI/HO/EAD/EAD5/MC/VS/2019/28610/1 dated November 4, 2019 the Noticee was granted an opportunity of personal hearing on November 14, 2019. Vide e-mail dated November 13, 2019 the Noticee requested extension of time to appear for the personal hearing due to medical reasons. In the interest of justice, the Noticee's request was acceded to, and rescheduled date of

December 3, 2019 was communicated to the Noticee for personal hearing vide e-mail dated November 13, 2019.

14. The Authorised Representative of the Noticee and Company Secretary, Ms. Shailashri Bhaskar, attended the hearing on behalf of the Noticee and reiterated the submissions made vide reply dated October 29, 2019.

15. In the light of the allegations contained in the SCN, the Noticee's submissions dated October 29, 2019, the submissions made during the hearing conducted on December 3, 2019 and relevant material available on record, I hereby proceed to decide the case on merits.

## CONSIDERATION OF ISSUES AND FINDINGS

16. The issues arising for consideration in the instant proceedings before me are:-

I. Whether the Noticee has violated provisions of -
   a) Clause 40A of the erstwhile Listing Agreement read with Regulation 38 of the LODR Regulations
   b) Rule 19A of the SCRR

II. If yes, whether the Noticee is liable for imposition of monetary penalty under Section 23E of the SCRA?

III. If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15 J of the SEBI Act and 23J of the SCRA read with Rule 5 (2) of the Adjudication Rules and the SCRA Adjudication Rules?

**ISSUE I. Whether the Noticee violated provisions of –**

**a) Clause 40A of the erstwhile Listing Agreement read with Regulation 38 of the LODR Regulations**

**b) Rule 19A of the SCRR**

17. The relevant legal provisions are reproduced for reference as follows:-

**Listing Agreement**

**Clause 40A**

**"*Minimum level of public shareholding***

*(i) The company agrees to comply with the requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957.*

*(ii) Where the company is required to achieve the minimum level of public shareholding specified in Rule 19(2)(b) and/or Rule 19A of the Securities Contracts (Regulation) Rules, 1957, it shall adopt any of the following methods to raise the public shareholding to the required level:-*

*(a) issuance of shares to public through prospectus; or*

*(b) offer for sale of shares held by promoters to public through prospectus; or*

*(c) sale of shares held by promoters through the secondary market in terms of SEBI circular CIR/MRD/DP/05/2012 dated February 1, 2012; or*

*(d) Institutional Placement Programme (IPP) in terms of Chapter VIIIA of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended.*

*(e) Rights Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, whether present or future, that may arise from such issue.*

*(f)Bonus Issues to public shareholders, with promoter/promoter group shareholders forgoing their entitlement to equity shares, whether present or future, that may arise from such issue.*

*(g)any other method as may be approved by SEBI on a case to case basis*.

**LODR Regulations**

**Regulation 38**

"*The listed entity shall comply with the minimum public shareholding requirements specified in Rule 19(2) and Rule19A of the Securities Contracts (Regulation) Rules, 1957 in the manner as specified by the Board from time to time:*

*Provided that provisions of this regulation shall not apply to entities listed on institutional trading platform without making a public issue*".

**SCRR, 1957**

**Rule 19A**

**"Continuous Listing Requirement.**

**19A.** *(1) Every listed Company other than public sector company shall maintain public shareholding of at least twenty five per cent.*

*Provided that any listed company which has public shareholding below twenty five per cent, on the commencement of Securities Contracts (Regulation) (Amendment) Rules, 2010, shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India.*

18. Initial and continuous listing requirements were specified, *inter alia,* in Clause 19 (2) (b) and Clause 19A, respectively, of the SCRR. Clause 19A was inserted by the Securities Contracts (Amendment) Rules, 2010, w.e.f. 4-6-2010 and amended by the Securities Contracts (Regulation) (Second Amendment) Rules, 2010, w.e.f. 9-8-2010.

19. As per the proviso to Clause 19A, a listed company whose public shareholding was below 25% on the date of commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010 i.e. June 4, 2010, had to increase its public shareholding to at least 25% within three years from such date i.e. by June 4, 2013.

20. Vide SEBI Circular No. CIR/CFD/DIL/10/2010 dated December 16, 2010, Clause 40A was suitably amended to provide for methods for complying with the minimum public shareholding requirement prescribed in Clauses 19 (2) b) and 19A of the Listing Agreement. Subsequently SEBI issued Circular dated February 8, 2012, stating that companies could achieve minimum public shareholding through

institutional placement programme, and Circular dated August 29, 2012 which specified other additional methods for complying with minimum public shareholding ("**MPS**") requirements such as rights issue, bonus issue and any other method approved by SEBI on a case to case basis.

21. It is not disputed that on June 4, 2010, the public shareholding of the Noticee was below 25%. Therefore, in terms of the proviso to Rule 19A (1) of the SCRR, the Noticee was to increase public shareholding to at least 25% within three years from June 4, 2010 i.e. by June 3, 2013. However, despite existence of the various permitted methods of increasing public shareholding prescribed through the SEBI Circulars mentioned earlier, as well as the option of applying to SEBI for approval of any other methods on a case to case basis, the Noticee was not able to comply with MPS requirements till January 25, 2019, i.e. with a delay of 5 years and 7 months.

22. As per the Noticee's submissions, trading of its shares had been suspended since 2001 despite efforts of the Noticee to comply with listing norms, pay listing fees and get the suspension revoked. There is evidence on record to indicate that vide a letter dated September 10, 2014 the Noticee tried to satisfy NSE regarding alleged non-compliances with various listing conditions in its Show Cause Notice dated September 5, 2001. It is observed that the Noticee also conducted discussions with NSE in February 2013, during which NSE informed the Noticee that the Offer for Sale portal of NSE for offloading the Noticee's promoters' shares for the purpose of achieving the mandatory requirement of MPS upto 25% could not be used since the trading of Company's shares were under suspension.

23. From a copy of letter dated September 10, 2014 to NSE in response to the non-compliances with listing conditions by the Noticee, it is seen that on account of issues, *inter alia,* related to listing compliance such as closure of transfer books, non-submission of Annual Reports for 1999-2000 to NSE, filing of distribution schedule and shareholding patterns for 1999-2000 and quarters ended March 2001 and June 2001, etc., the Noticee's shares had remained suspended from

2001. For certain non-compliances such as non-production of certificate from practising company secretary regarding transfer of shares, shareholding pattern for quarter ended September 2001, limited review report for half-year ended September 30, 2001 it is seen that the Noticee disputed having failed to submit the relevant information/compliance documents.

24. I note that the response of the Noticee in respect of the NSE's suspension notice of 2001 appears to have been greatly delayed. In fact, the Noticee appears to have started following up actively in respect of suspension notice only during 2013-14 towards the end of the timeline of 3 years from June 4, 2010 permitted to listed companies for compliance with MPS norms.

25. E-mail communication between the Noticee and NSE also reflects ongoing exchange of details regarding alleged deficiencies in compliance pointed out by NSE, and attempts to seek advice from NSE regarding facilitation of the offloading of promoters' shares through Offer for Sale or through off-market transactions, to enable compliance with MPS norms. The Noticee was asked to pay processing fee for revocation from suspension, which was paid to NSE on January 3, 2017 as per copies of relevant e-mails annexed to the Noticee's reply to the SCN. Listing fees was also stated to have been paid to NSE for 2017. However, NSE refused to revoke the suspension of trading due to "disciplinary action against the promoters of the Company in force for non-compliance with minimum public shareholdings requirement". Through its letter dated August 17, 2017, NSE also intimated to the Noticee that the Noticee will be considered for compulsory delisting.

26. The Noticee appealed against the NSE's communication regarding non-revocation of suspension, and the Hon'ble Securities Appellate Tribunal vide order dated November 10, 2017 in Appeal No. 299 of 2017 permitted the Noticee to withdraw the Appeal and make representation before SEBI regarding the issue of compliance with MPS requirements. Pursuant to personal hearing before the Whole Time Member prior to issuance of order dated July 20, 2018, NSE finally

revoked suspension of trading in the scrip of the Noticee to enable compliance with MPS requirements. Vide Circular July 6, 2018 NSE notified that suspension in trading of shares of the Noticee will be revoked with effect from July 16, 2018, and 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, are under lock–in upto October 15, 2018."

27. The shareholding pattern of the Noticee as on September 30, 2015 as well as March 31, 2018 showed that promoter group shareholding was 86.27%, and public shareholding was 13.73%. From the material on record, two observations emerge. Firstly, there is no evidence that the Noticee took any serious steps to satisfy NSE regarding compliance with various listing requirements or proposed any methods of achieving compliance with MPS norms between June 4, 2010 and February 2013. Secondly, copies of e-mails exchanged between NSE and the Noticee indicate that even as of March 2017, the Noticee was still attempting to comply with various requirements of the LODR Regulations and correcting certain deficiencies pointed out by the NSE in connection with suspension of trading of shares of the Noticee. Thus, as a listed company, the Noticee failed to make timely efforts to comply with applicable law related to minimum public shareholding requirements, contained in Rule 19A of the SCRR and Clause 40A of the erstwhile Listing Agreement read with Regulation 38 of the LODR Regulations.

28. In this regard, the importance of timely compliance with MPS norms cannot be overemphasised. A Press Release dated June 4, 2010, issued by the Finance Ministry following introduction of Rule 19A stated that "*A dispersed shareholding structure is essential for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices. Further, the larger the number of shareholders, the less is the scope for price manipulation*."

29. Further, I note that in several cases, the Securities Appellate Tribunal has looked unfavourably upon delayed initiation of efforts to comply with MPS norms after

they had been brought into force on June 4, 2010. In *Gillette India Limited v. SEBI and Anr.*, the SAT noted the delay on part of the Appellant to come up with a proposal to achieve the minimum public shareholding, stating that "*the first amendment to the SCRR was made on June 4, 2010 and that the Appellant waited for more than two years to draw up the scheme as presented in Application dated October 10, 2012*". The SAT also stated that "*the Appellant should have behaved like a proactive and responsible entity by immediately putting its machinery into gear and doing everything possible to work in consonance with the law to protect the interests of the market*". In the instant case, the material on record indicates absence of proactive and timely efforts on the part of the Noticee to initiate action to ensure compliance with MPS requirements.

30. In view of the aforementioned, I find that the allegations regarding contravention of Rule 19A of the SCRR and Clause 40A of the erstwhile Listing Agreement read with Regulation 38 of the LODR Regulations stand established with respect to the Noticee.

**ISSUE I. If yes, whether the Noticee is liable for imposition of monetary penalty under Section 23E of the SCRA?**

**ISSUE II. If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15 J of the SEBI Act and 23J of the SCRA read with Rule 5 (2) of the Adjudication Rules and the SCRA Adjudication Rules?**

31. It has been established that the Noticee violated Rule 19A of the SCRR and Clause 40A of the erstwhile Listing Agreement read with Regulation 38 of the LODR Regulations regarding compliance with minimum public shareholding norms within stipulated timelines.

32. In view of the above, the Noticee is liable for imposition of monetary penalty under Section 23E of the SCRA.

33. Section 23E of the SCRA states:-

***"Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.***

***23E****. If a company or any person managing collective investment scheme or mutual fund fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall liable to a penalty not exceeding twenty-five crore rupees."*

34. While determining the quantum of penalty under Section 23E of the SCRA, the following factors stipulated in Section 23J of the SEBI Act, have to be given due regard:-

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.

35. I find that there is nothing on record to show the amount of disproportionate gain or unfair advantage made by the Noticee or the amount of loss caused to investors as a result of the default. In respect of the repetitive nature of the default, as per the SCN, the Noticee failed to comply with MPS requirements within the stipulated deadline by June 3, 2013, and for a further period of 5 years and 7 months. However, I note that the period of delayed compliance attributed to the Noticee i.e. of 5 years and 7 months is on account of inability of the Noticee to get its suspension revoked, despite making serious though belated efforts to do so. The entire period of delay cannot be attributed to the Noticee alone, as it continued to be suspended for the very reason that it sought revocation of suspension i.e. compliance with the Minimum Public Shareholding (MPS) requirements. The delayed compliance with MPS norms by the Noticee is also a direct fallout of non-

revocation of suspension of trading in shares of the Noticee till July 16, 2018 by the NSE.

36. Para. 4.3.2 of SEBI Circular dated October 10, 2017 on "Non-compliance with the Minimum Public Shareholding (MPS) requirements" clearly stipulates that the restriction of freezing shares of promoter and promoter group till date of compliance with MPS norms by the company "*shall not be an impediment for the entity with respect to compliance with the minimum public shareholding norms through the methods specified/approved by SEBI*." It follows that any restrictions imposed on the Noticee due to non-compliance with MPS requirements could not have been permitted to become an impediment to the Noticee's efforts to ensure compliance through any one of the approved methods, including offer for sale by promoters of the Noticee.

37. Therefore, a part of the delay appears to have occurred due to procedural and regulatory constraints beyond the Noticee's control, despite evident *bonafide* efforts by the Noticee to comply with applicable listing and MPS requirements.

38. Thus, while the Noticee has failed to comply with MPS norms in terms of Rule 19A of the SCRR and Clause 40A of the Listing Agreement within the stipulated time, the Noticee cannot be penalised disproportionately for the delayed compliance as part of the delay is attributable to factors beyond the control of the Noticee between 2013 and 2019. Therefore, I am of the view that a penalty of Rs.5,00,000 will be commensurate with the violations committed by the Noticee.

**ORDER**

39. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of the SEBI Act and 23-I of the SCRA read with Rule 5 of the Adjudication Rules and the SCRA

Adjudication Rules, I hereby impose the following penalty upon the Noticee as shown in the table below:-

| Name of the Noticee | Penalty Provisions and Violations | Penalty Amount |
|---|---|---|
| International Constructions Limited | Under Section 23E of the SCRA for violation of –<br><br>(a)Clause 40A of the erstwhile Listing Agreement read with Regulation 38 of the LODR Regulations<br><br>(b)Rule 19A of the SCRR | ₹500,000/- (Rupees Five Lakhs only) |
| **Total Penalty** | | **₹5,00,000/- (Rupees Five Lakh only)** |

40. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link-

**ENFORCEMENT → Orders → Orders of AO → PAY NOW**

41. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – III of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

42. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

MANINDER CHEEMA
Digitally signed by MANINDER CHEEMA
Date: 2019.12.24 17:43:54 +05'30'

**DATE: December 24, 2019**
**PLACE: MUMBAI**

**MANINDER CHEEMA**
**ADJUDICATING OFFICER**