BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO/73/2012]

UNDER SECTION 23-I OF SECURITIES CONTRACT (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of

Concurrent (India) Infrastructure Limited

(Now known as Shriniwas Power & Infrastructure Limited)
[PAN: AAACT3165C]

In the matter of
Concurrent (India) Infrastructure Limited)

Background of the case

1. Securities and Exchange Board of India (SEBI) had received an email from CDSL regarding the high volume of trade of a client in the scrip of Concurrent (India) Infrastructure Ltd.(**CIIL/Noticee**) (now known as Shriniwas Power & Infrastructure Ltd.) when compared to the market volume. During investigation, the quarterly shareholding patterns in the scrip from the Bombay Stock Exchange (BSE) website were examined. The said investigation indicated that the noticee had filed incorrect and misleading information with the stock exchange in respect of the shareholding of promoters.

2. In view of the findings of the investigation as given above, SEBI, vide Order dated June 07, 2012 appointed the undersigned as Adjudicating Officer (**AO**) under Section 23 I of Securities Contracts (Regulation) Act, 1956 (**SCR Act**) read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (**SCR Rules**) to inquire into and adjudge under Section 23E of the SCR Act, the alleged violation of provisions of SCR Act and Listing Agreement by the Noticee.

Show Cause Notice, Reply & Personal hearing

3. Show Cause Notice dated July 18, 2012 (**SCN**) was issued to the Noticee in terms of the provisions of Rule 4 (1) of the SCR Rules to show cause as to why an inquiry should not be held against it in respect of the violations alleged to have been committed by it. The SCN alleged that the Noticee had filed incorrect and misleading information with the stock exchange with regard to the holding of the promoters. Shareholding of the persons belonging to the category "Promoter and Promoter group" for the quarter March 2011, disclosures made by the promoters Ms. K Nirmala & by Ms.K. Nirupama and Clause 35 of the listing agreement were furnished to the Noticee along with the SCN.

4. The Noticee, in its response to the SCN made vide letter dated August 04, 2012, stated that its staff members made a mistake inadvertently and sent a wrong shareholding pattern to BSE regarding the shareholding of the promoters Ms. K Nirmala and Ms. K Nirupama.

5. Subsequently the Noticee was, vide notice dated November 07, 2012 advised to appear before the AO for personal hearing on November 16, 2012. The Noticee, vide its email dated November 08, 2012 sought reschedulement of the hearing on the ground that its office was closed between November 13 to 18, 2012 on account of Diwali festival. Therafter, vide letter dated November 09, 2012, the Noticee submitted that it had already made its submissions vide letter dated August 04, 2012 and has no additional submissions to make in this regard.

Consideration of Issues, Evidence and Findings

6. I have carefully perused the documents available on record and the written submissions made by the Noticee. The issues that arise for consideration in the present case are:

   a. Whether the Noticee has violated the provisions Clause 35 of the Listing Agreement read with section 21 of the SCR Act?

   b. Does the violation, if any, on the part of the Noticee attract penalty under section 23E of SCR Act?

   c. If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 23J of the SCR Act?

7. The relevant provisions of Section 21 of SCR Act are as under:

SCR Act:

"Conditions for listing

21. Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange."

8. When the shares of a company are listed, details as required by the Listing Agreement have to be filed with stock exchange. As stipulated vide clause 35 of the listing agreement, such details, inter-alia, include "Statement showing shareholding of persons belonging to the category - Promoter and promoter Group". As on 31/03/2011, the paid up capital of CIIL was Rs 43,05,99,990 divided into 4,30,59,999 shares of Rs 10 each (source : CIIL annual report available on BSE web site). I find that the Noticee had filed the shareholding details for the entities in the “Promoter and Promoter Group” for quarter ending March 2011 with BSE.

9. Regarding the shareholding of the promoter Ms. K. Nirmala, out of 7, 36, 000 CIIL shares pledged by the entity, pledge for 2,00,000 CIIL shares was invoked on February 4, 2011. Upon invocation, the shareholding of Ms. K. Nirmala had come down to 2,635,259 CIIL shares (6.12 % of paid up capital). However, the shareholding pattern for the quarter ending March 2011 shows 7,36,000 shares to be encumbered by the entity and the entity’s shareholding to be 2,835,259 shares (6.58%). Therefore, I find that the shareholding pattern filed by the Noticee with the stock exchange shows incorrect information regarding the shareholding of Ms. K. Nirmala.

10. Similarly, regarding the shareholding of another promoter, Ms. K. Nirupama, pledge was invoked for a total of 1,700,000 CIIL shares on March 17, 2011 and March 18, 2011, subsequent to which her holding has come down to 1,243,664 shares (2.98%) . However, the shareholding pattern for the quarter ending March 2011 discloses 1,700,000 shares to be encumbered and her shareholding to be 2,943,664 shares (6.84%) which is incorrect.

11. I have noted the reply of the Noticee that its staff members made a mistake inadvertently and sent a wrong shareholding pattern to BSE regarding the shareholding of the promoters. I find it as an admission of the charges leveled against the Noticee.

12. In my view, the periodic disclosures under Clause 35 of listing agreement serve a very important purpose of informing the market and the investors about the shareholding of the promoter group entities. In view of the same, the aforesaid filing of incorrect disclosure by the Noticee has resulted in giving a wrong picture of the shareholding of promoter entities to the market. The shareholding pattern indicates a higher shareholding of the said promoter entities (K Nirmala & K Nirupama) than the actual holding which was incorrect and therefore misleading to the general investors. By making wrong disclosures under clause 35 of listing agreement, the Noticee has violated section 21 of SCR Act.

13. The aforesaid violations by the Noticee make it liable for penalty under section 23E of SCR Act which reads as under:

SCR Act, 1956

23E - "Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds: *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 be liable to a penalty not exceeding twenty-five crore rupees.*

14. While determining the quantum of penalty, it is important to consider the factors stipulated in section 23J of SCR Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

While adjudging quantum of penalty under S.23-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."*

15. It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. There is no material on record which dwells on the extent of specific gains made by the Noticee by making the incorrect disclosures. Further it is also not possible to ascertain the loss to the investors in monetary terms. However the fact remains that by not making the disclosures correctly, the Noticee had deprived the investors of timely information about reduction in shareholding of promoter entities due to pledge invocation. As per records available in this case, there is one instance each of wrong disclosures in respect of shareholding of K. Nirmala & K. Nirupama.

16. Disclosure of the holdings of the promoters and their transactions therein, on the websites of the exchanges, serve a very important purpose as these holdings are a barometer of the promoters' confidence in the future of the company. If such disclosures are not made correctly, they are likely to result in misleading the market and the general investors.

Order

17. After taking into consideration all the facts and circumstances of the case, I come to conclusion that this is a fit case for imposing the monetary penalty on the aforesaid Noticee. I, in exercise of the powers conferred upon me under section 23-I of SCR Act, impose a penalty of ₹. 50,000/- (Rupees fifty thousand only) on the Noticee, Concurrent (India) Infrastructure Ltd., (now known as Shriniwas Power & Infrastructure Ltd.) in terms of Section 23E of the SCR Act for violation of provisions of Clause 35 of the Listing Agreement read with section 21 of the SCR Act. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

18. The penalty shall be paid by way of a duly crossed demand draft drawn 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 The Chief General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, Plot no.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051.

19. In terms of the Rule 6 of the SCR Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India. The matter is disposed of accordingly.

DATE: November 30, 2012
PLACE: Mumbai

PIYOOSH GUPTA
ADJUDICATING OFFICER