BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. PKB/AO- 77/2010]

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

In Respect Of
Shri Manmohan Shetty
(PAN: AAIPS2569I)

In The Matter of
Adlabs Films Ltd.

BRIEF FACTS OF THE CASE

1. Adlabs Films Ltd. (hereinafter referred to as 'Adlabs' or 'the company') was founded by Mr. Manmohan Shetty (hereinafter referred to as 'the noticee') and Mr. Vasanji Mamania in 1978 for setting up a motion picture processing laboratory in Mumbai.

2. The company's board meeting was held on April 22, 2006, which got adjourned and concluded on April 23, 2006. The board meeting was convened to approve the following:
   (i) Audited Accounts for the financial year ended March 31, 2006;
   (ii) to recommend dividend on equity shares for the year ended March 31, 2006 and;
   (iii) to consider the proposal for demerger of company's FM radio business.

3. BOD approved the proposal for demerger of the FM Radio Business to a wholly owned subsidiary (SPV), pursuant to a scheme of arrangement ("Scheme") under Sections 391-394 of the Companies Act, 1956. The Scheme envisaged issue of pro-rata shares by the SPV, to all shareholders of the company, in the ratio of 2 shares of the SPV for every 1 share of the company, without any payment. The SPV was proposed to be listed, in terms of the applicable provisions of Law. The Scheme also envisaged amalgamation / merger of two other subsidiaries of the company Viz. Entertainment One India Ltd. and Mukta Adlabs Digital Exhibition Pvt. Ltd. with the company. The above Scheme was

subject to all requisite permissions, sanctions and approvals including, inter-alia, of share holders, lenders, stock exchanges, High Courts, regulatory authorities, etc.

4. From the information received from the exchanges the outcome regarding recommending a dividend of 45% for the year ended March 31, 2006 was sent by the company to NSE on April 24, 2006 at 09.21 a.m. and NSE disseminated it at NSE Website on the same day at 9:40:44 a.m. The outcome regarding recommending a dividend was sent by the company to BSE on April 23, 2006 (Sunday) at 10:47 a.m. and BSE disseminated it at BSE Website on April 24, 2006 at 9:53:25 a.m. The outcome regarding the demerger of FM radio business was sent by the company to NSE on April 24, 2006 at 09.21 a.m. and NSE disseminated it at NSE Website on April 24, 2006 at 9:40:44 a.m. The same information was sent by the company to BSE on April 23, 2006 (Sunday) at 10:46 a.m. and BSE disseminated it at BSE Website at 9:56:35 a.m.

5. From the analysis of trade and order log of April 24, 2006, the demat statement of noticee and the reply received from him, it was observed that the noticee had sold 10,00,000 shares of Adlabs Films Ltd. on April 24, 2006 through broker Gupta Equities Pvt. Ltd. on BSE. Out of this 7, 50,000 shares were sold between 10:11:30 to 10:12:34 and 2,50,000 shares were sold at 15:16:44. The sale of 10, 00,000 shares were reported to the BSE under bulk deal.

6. Out of the above he sold 10,00,000 shares on April 24, 2006 at average rate of Rs. 402.60 per share.

7. It is observed that the noticee sold 10,00,000 shares of Adlabs Films Ltd. before the expiry of the 24 hours of the outcome of the board meeting was made public. Further it has been observed that he had sold the shares at average rate of Rs. 402.60 on BSE on April 24, 2006 and total market volume was 18,39,171 shares (including 10,00,000 shares sold by Manmohan Shetty). The closing price on April 24, 2006 was Rs 409.14. As informed by the noticee, these shares were allotted to him at Rs. 5/- per share. It is observed that the closing price of the shares on the next day i.e. April 25, 2006 had gone down to Rs. 393.63. It is also observed that he has not sold any shares of Adlabs Films Ltd. prior to this period i.e. during January 01, 2006 to April 23, 2006. Thus it is seen that he benefited by selling the shares before the expiry of the 24 hours of the outcome of the board meeting was made public.

8. In view of the above, the noticee was alleged to have violated Regulation 12(1) read with Clause 3.2-5 and 3.2-3 of Code of Conduct specified under Part A of Schedule I of the SEBI (Prohibition of Insider Trading) Regulations, 1992 and accordingly adjudication proceedings were initiated.

APPOINTMENT OF ADJUDICATING OFFICER

9. Shri D. Sura Reddy was appointed as Adjudicating Officer ('AO') vide order dated December 27, 2007 under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred as 'Rules') to enquire into and adjudge upon the alleged violations committed by Shri Manmohan Shetty under section 15HB of the SEBI Act, 1992. Pursuant to the transfer of D. Sura Reddy, I was appointed as Adjudicating Officer vide order dated December 10, 2008.

SHOW CAUSE NOTICE, HEARING AND REPLY

10. A show cause notice (SCN) dated February 21, 2008, was issued to the noticee by the then AO, asking him to show cause as to why an inquiry should not be held against him for the alleged violations of law committed by him. The SCN came back undelivered and it was re-sent on March 13, 2008. The noticee, vide letter dated April 10, 2008, submitted that the sale of 10,00,000 shares of Adlabs on April 24, 2006, at an average rate of Rs. 402.60 per share was a normal stock transaction. He also stated that the outcome of the board meeting held on April 23, 2006 would have had a positive impact on the stock price of Adlabs and that this was subsequently evident from the fact that the stock price of Adlabs had increased on a much later date. Hence, the noticee had not made any financial gain and that the sale was not based on any inside information. ***The noticee stated that the sale of shares by him before the expiry of 24 hours of the board meeting made public was purely an inadvertent and technical error on his part, without any malafide intention.*** In the same letter, the noticee expressed his intention to file for consent and enclosed an application for the same. After the consent application of the noticee was rejected, the noticee made the following submissions vide letter dated December 19, 2008, stating that:

    (i) Adlabs had not informed the noticee about the closure of the trading window on April 24, 2006 and re-opening of the trading window on April 25, 2006;

(ii) the sale of 10,00,000 shares of Adlabs by the noticee was a normal market transaction;

(iii) the shares were sold by him only after the outcome of the Board Meeting was displayed on the stock exchange website;

(iv) the outcome of the Board meeting held on April 23, 2006 would have had a positive impact on the stock price of Adlabs;

(v) he had sold the shares at an average price of Rs. 402.60 on April 24, 2006. On the same day, the scrip touched a high of Rs. 470 on NSE and Rs. 449 on BSE. Subsequently on April 25, 2006 (when he should have sold as per SEBI Regulations) the scrip touched a high of Rs. 407 on NSE and Rs. 399.90 on BSE;

(vi) after he sold the scrip, the price of the scrip went up higher (compared to his selling price) on April 24 and April 25, 2006. Thus it was clear that he had not derived any undue profit by selling the scrip on April 24, 2006;

(vii) the above sale done by him was not based on any inside information nor was it done with any malafide/manipulative intent;

(viii) ***the above sale of shares by him, before the expiry of 24 hours of the outcome of the Board meeting being made public, was purely an inadvertent and technical error without any malafide intention.*** Moreover, the company, Adlabs Ltd., did not inform him about the closure of the trading window.

11. Thereafter, a notice of inquiry dated October 7, 2009 was issued to the noticee, granting a hearing before the undersigned on October 26, 2009. Vide letter dated October 22, 2009, the noticee stated that he would like to submit a revised application for consent. The matter could not be settled as per terms proposed by the noticee and thereafter, adjudication proceedings recommenced against the noticee. Vide notice of inquiry dated November 25, 2009, the noticee was granted an opportunity of hearing on December 10, 2009. The noticee, vide letter dated December 10, 2009, requested an adjournment in the matter and sought another date of hearing after 15 days. The request was acceded and vide notice of inquiry dated December 14, 2009, the noticee was granted a hearing on January 12, 2010. The noticee did not appear for the hearing. In the interest of natural justice, the noticee was granted another opportunity of being heard on January 28, 2010. The hearing was attended by the noticee alongwith Mr. Somasekhar Sundaresan, Advocate, from J. Sagar and Associates. It was stated that written submissions would be made by February 5, 2010.

12. Vide letter dated February 5, 2010, the noticee made following submissions:

"MEMO OF SUBMISSIONS

Re: Adjudication proceedings relating to Mr. Manmohan Shetty, pursuant to Notice dated February 21, 2008 ("SCN")

I. This Memorandum of Submissions summarises certain key parameters and aspects which require to be borne in mind in the adjudication of the captioned proceedings.

Factual Backdrop:

II. The relevant facts of the case can be summarised as under:

*a. On April 22, 2006, Adlabs Films Limited (**"the Company"**) held a board meeting for approval of the following:*

i. Audited Accounts for the financial year ended March 31, 2006;

ii. To recommend dividend on equity shares for the year ended March 31, 2006; and

iii. To consider the proposal for demerger of company's FM radio business.

b. The meeting got adjourned to the next date and was concluded on April 23, 2006.

c. As required in the Listing Agreement, within 15 minutes of the decisions, the outcome of the board meeting was disseminated to the Stock Exchanges.

*d. On April 24, 2006, the Stock Exchanges in turn published the information on their websites – the National Stock Exchange (**"NSE"**) at 9:40:44 (news relating to dividend and demerger), and the Bombay Stock Exchange (**"BSE"**) at 9:53:25 (news relating to dividend) at 9:56:35 (news relating to demerger).*

*e. On April 24, 2006, Mr. Manmohan Shetty (**"the Noticee"**) sold 750,000 shares of the Company between 10:11:30 and 10:12:34. Similarly, the Noticee sold 250,000 shares at 15:16:44.*

SEBI's Allegation:

III. It is alleged by SEBI that the information relating to decisions of the board meeting became publicly known only on April 24, 2006 at 9:40:44, when the NSE uploaded the Company's decisions taken on April 23, 2006, on the NSE's website. Therefore, it is alleged by SEBI that the sale of shares

by the Noticee on April 24, 2006 took place before the expiry of 24 hours from the outcome of the board meeting "being made public". Consequently, it is alleged by SEBI that Clause 3.2-5 of the Code of Conduct set out in Part A of Schedule I of the SEBI (Prohibition of Insider Trading Regulations, 1992) ("the Regulations") read with Clause 3.2-3 thereof has been violated.

IV. *Pursuant to such an allegation it is proposed that penalty pursuant to adjudication in terms of Section 15HB of the SEBI Act, 1992 ("the Act") be imposed on the Noticee.*

NOTICEE'S SUBMISSIONS:

Provisions Relied on in the SCN:

V. *At the outset, the relevant provisions of the Code of Conduct contained in the Regulations and the contents of Section 15HB of the Act are extracted below for ease of reference:-*

"PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

Clause 3.2-3:

The trading window shall be, inter alia, closed at the time :

(a) Declaration of financial results (quarterly, half-yearly and annually).

(b) Declaration of dividends (interim and final).

(c) Issue of securities by way of public / rights / bonus etc.

(d) Any major expansion plans or execution of new projects.

(e) Amalgamation, mergers, takeovers and buy-back.

(f) Disposal of whole or substantially whole of the undertaking.

(g) Any change in policies, plans or operations of the company.

Clause 3.2-5:

All directors / officers / designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the period when trading window is closed, as referred to in para 3.2-3 or during any other period as may be specified by the Company from time to time."

Section 15HB:

*"Whoever **fails to comply with any provisions of this Act**, the rules **or the regulations** made or directions issued by the Board there under for*

which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."
*(**Emphasis Supplied**)*

Analysis of Provisions:

VI. From a plain reading of the aforesaid provisions, it would be clear that the items on the agenda for the board meeting viz. declaration of results, declaration of dividends and demerger were covered by the scope of Clause 3.2-3 of the Code of Conduct. Therefore, pursuant to Clause 3.2-5 of the Code of Conduct, directors and designated employees of the Company would be unable to deal in the securities during the period in which the trading window is closed for purposes of Clause 3.2-3.

VII. It is evident from a plain reading of the provisions that the provisions relied upon, themselves, do not prescribe any time limit for which the trading window ought to be closed.

VIII. The Regulations essentially prohibit dealing in securities by any person when in possession of unpublished price sensitive information. However, when information which is price sensitive becomes public, it ceases to remain unpublished and therefore, becomes available to the world at large. Consequently, any asymmetry in the access that the general public may have to such information would be removed and therefore, no person would have the ability to deal in securities in reliance of information that he alone has to the exclusion of the rest of the world.

IX. It is submitted that the concept of trading window serves the purpose of ensuring that insiders who are expected to have access to information do not trade in securities while in possession of information which they alone possess. Therefore, when matters listed out in Clause 3.2-3 are decided upon, the trading window is required to be shut. The length of time in which the trading window should be shut is left to the discretion of the companies concerned, and SEBI has not prescribed any parameters in the aforesaid provisions in this regard.

Dissemination Occurred on April 23:

X. From a clear reading of the facts summarised above, it is evident that admittedly the Company had communicated the outcome of the deliberations at its board meeting on April 23, 2006 in compliance with the Listing Agreement. Such a communication by the listed company constitutes making the information public. In fact, a press release had been issued by the Company at the relevant time. Since the Noticee has

not been involved with the Company for the past few years after exiting the Company, the Notice does not have this readily.

XI. *However, it is indeed clear that news about the decisions taken on April 23, 2006 was widely disseminated and published in various media on April 23, 2006. Annexed hereto and collectively marked as "**Annexure**" are extracts from the internet of various forms of publication of the news, which further underlines the fact that the news was widely disseminated on April 23, 2006. Some of these print-outs also make it clear that UNI (United News of India), a widely subscribed news agency had reported the news on April 23, 2006. Newspapers were able to publish the news in the morning editions of April 24, 2006 only because the Company had disseminated the news on April 23, 2006. The electronic media such as television channels would report such news even more immediately on a real time basis i.e. on the same day. Therefore, the sale of shares on April 24, 2006 was well after the information had been widely disseminated, and the market had had enough time to absorb the news and its impact.*

XII. *It is submitted that even if should one regard the upload by the NSE on its website as constituting information becoming published, the sale of shares took place clearly well after such upload by the Stock Exchange. Therefore, the sale of shares by the Noticee took place clearly a day after dissemination and publication by the Company of the decisions by the Board of Directors of the Company on April 23, 2006.*

Stock Exchange Publication Irrelevant:

XIII. *It is SEBI's contention in the SCN that the Noticee sold the shares in question within 24 hours from the time the information was first published by the Stock Exchange and therefore, allegedly within 24 hours of the information being "made public". It is respectfully submitted that for the reasons set out above, such an allegation is completely baseless and cannot, by any stretch of imagination, be regarded as supporting any reasonable imposition of a penalty, whether under Section 15HB of the Act or otherwise.*

XIV. *It is submitted that it is erroneous to conclude (as the SCN has done) that until and unless the Stock Exchange publishes the information on the website, the information is not in the public domain. In fact, once the information comes out in the public domain, the information ought to be recorded as published information. It is noteworthy that the term 'unpublished' is defined in Regulation 2(k) of the Regulations as follows:-*

*"**2(k)"unpublished"** means information which is not **<u>published by the company</u>** or its agents and is not specific in nature"*

*(**<u>Emphasis Supplied</u>**)*

XV. It is, therefore, evident that there is no necessity for the Stock Exchange to upload on its website the information disseminated by the listed company for the information to be considered as having become "published". On the contrary, the definition of the term 'unpublished' extracted above underlines the fact that information that is not published by the Company would be considered unpublished. Therefore, the upload of the information by the NSE or the BSE on the stock exchange website cannot by any stretch of imagination or reasoning, be considered to be the trigger of making public the news about the decisions taken by the board of the Company. In fact, the timing of the stock exchange uploading information that is already widely disseminated would be wholly irrelevant for purposes of determining whether the market had had a chance to absorb the news.

XVI. Similarly, even for the sake of argument, if one were to at all regard the Stock Exchange website as being determinative of whether information was "published", then too, the trading took place only well after the information was published.

<u>Provisions Inapplicable:</u>

XVII. As seen above, neither Clause 3.2-5 nor Clause 3.2-3 of the Code of Conduct in the Regulations stipulates a 24-hour period after the publication of the information, as alluded to in the SCN. Consequently, it is respectfully submitted that there is no case to be made for imposition of penalty against the Noticee on the allegation that the sale took place allegedly within such 24-hour period, which, as pointed out above, is in any case being wrongly computed in the SCN by linking the starting point to the upload on the NSE website.

XVIII. Regulation 12 of the Regulations requires formulation of the Code of Conduct, and is the provision pressed into service against the Noticee in the SCN. For ease of reference, Regulation 12, as prevailing at the relevant time, is extracted below:-

*"**12.(1)<u>All listed companies</u>** and organisations associated with securities markets including :*

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds;

(b) the self-regulatory organizations recognised or authorized by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956;

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

***shall frame a code** of internal procedures and conduct as near thereto the Mode Code specified in Schedule I of these Regulations.*

***(2)** The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.*

***(3) All entities mentioned in sub-regulation (1)**, shall adopt appropriate **mechanisms and procedures to enforce the codes** specified under sub-regulations (1) and (2).*

***(4) Action taken** by the entities mentioned in sub-regulation (1) against any person **for violation of the code** under sub-regulation (3) **shall not preclude the Board from initiating proceedings for violation of these Regulations**."*

*(**Emphasis Supplied**)*

XIX. *It will be seen from the foregoing that Regulation 12 requires listed companies and organizations associated with the securities market to frame a Code of Conduct as near as possible to the Model Conduct specified in the Schedule to the Regulations. Therefore, the duty cast by Regulation 12 is on listed companies to formulate a Code of Conduct and administer the same. For enforcement of such Code of Conduct, the listed companies are required to adopt appropriate mechanisms and procedures.*

XX. *Finally, should any listed company have taken action for violation of the Code of Conduct, such action would not preclude an action by SEBI for violation of the Regulations. The Code of Conduct is prescribed by the listed company. Should any person violate the Code of Conduct, action would have to flow under the Code of Conduct in terms of enforcement by the relevant listed company. Should a person have violated the Regulations, it would be no excuse for such person to argue that he has already been acted against by the listed company in question under the Code of Conduct.*

XXI. On the other hand, by no stretch of reasoning can it be argued that any and every breach of the Code of Conduct would constitute a violation actionable under the Regulations. Therefore, a violation of the Code of Conduct does not automatically become a violation of the Regulations. In any event, the SCN does not bear out a violation by the Noticee of either the Regulations or the Code of Conduct. Therefore, there is no case at all for imposition of penalty under Section 15HB of the Act.

Section 15HB Not Attracted:

XXII. It is respectfully submitted that in the absence of any tangible or discernable contravention being made out, Section 15HB of the Act cannot be pressed into service for purposes of imposition of penalty. A fundamental requirement for application of Section 15HB of the Act is that there ought to be a failure to comply with any provision of the Act, or rules or regulations made under the Act, and for which non-compliance, no separate penalty has been provided.

XXIII. In the instant case, no failure of compliance with any provision of the Act or the Regulations has been made out, as explained above. The allegation in the SCN is that the Noticee has not complied with the Code of Conduct of the Company – not that the Noticee has violated any provision of the Act or the Regulations. This distinction, although nuanced, is critical, since it involves imposition of a penalty, which has far-reaching consequences for the Noticee."

CONSIDERATION OF ISSUES

13. On perusal of the Show Cause Notice and other material available on record, I have the following issues for consideration, viz,

1. Whether the noticee has violated the provisions of Regulation 12 (1) read with Clause 3.2-3 and 3.2-5 of the Code of Conduct specified under Schedule I of the SEBI (Prohibition of Insider Trading) Regulation, 1992.
2. Whether the noticee is liable for monetary penalty under sections 15 HB of the Act?
3. What quantum of monetary penalty should be imposed on the noticee, taking into consideration the factors mentioned in section 15J of SEBI Act?

FINDINGS

ISSUE 1: Whether the noticee has violated Regulation 12 (1) read with Clause 3.2-3 and 3.2-5 of the Code of Conduct specified under Schedule I of the SEBI (Prohibition of Insider Trading) Regulation, 1992.

14. I have examined the show cause notice, replies of the noticee and the material available on record. The provisions of law alleged to have been violated by the noticee read as follows:

Code of internal procedures and conduct for listed companies and other entities.

12. *(1) All listed companies and organisations associated with securities markets including :*

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations.

SCHEDULE I

[Under regulation 12(1)]

PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

3.2-3 *The trading window shall be, inter alia, closed at the time :—*

(a)Declaration of financial results (quarterly, half-yearly and annually).

(b)Declaration of dividends (interim and final).

(c)Issue of securities by way of public/rights/bonus etc.

(d)Any major expansion plans or execution of new projects.

(e)Amalgamation, mergers, takeovers and buy-back.

(f)Disposal of whole or substantially whole of the undertaking.

(g)Any changes in policies, plans or operations of the company.

3.2-5 *All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2-3 or during any other period as may be specified by the Company from time to time.*

15. I find from the submissions of the noticee that the noticee has raised some issues about the applicability of the provisions alleged to have been violated by the noticee. First I will deal with those submissions.

16. In paragraphs 6 to 9 of the submissions dated February 5, 2010, the noticee has brought out the issue that the length of time during which the trading window should be shut is left to the discretion of the company concerned and that SEBI has not prescribed any parameters in the aforesaid provision in this regard.

17. The noticee's contention that SEBI has nowhere prescribed the duration of time during which the trading window should remain closed, cannot be accepted. I find that Clause 3.2-4 of the Code of Conduct clearly stipulates that the trading window should remain closed for a period of 24 hours after the concerned information is made public. This provision appears to have been formulated for the purpose of allowing the public adequate time to fully understand, assimilate and absorb the information and to prevent insiders from taking *early mover's* advantage.

18. In paragraphs 13 to 16 of the submissions, the noticee contends that publication of the outcome of the Board meeting by the stock exchanges was irrelevant and that it was erroneous to conclude that until and unless the Stock Exchanges published the information on their websites, the information is not in the public domain. The noticee also referred to Regulation 2 (k) of the Regulations that defines the term 'unpublished' as "*information which is not published by the company or its agents and is not specific in nature*".

19. I find that what is meant by information being made public is that the public should have access to the information and in this case, what remains to be determined is whether the public had access to the information on the morning on April 23, 2006, as contended by the noticee. In such cases, the ‘publication’ of information is a question of fact and needs to be determined on the basis of the material available on record. I shall deal with the question of when the outcome of the Board meeting was actually disseminated to the public, in subsequent paragraphs. However, I also note that publication of the information by a company is always more reliable and meaningful when the same is disseminated through recognised stock exchanges where the scrip of the company is listed.

20. In paragraphs 18 to 21 of the written submissions, the noticee argues that every breach of the Code of Conduct does not constitute a violation actionable under the Regulations.

21. The noticee has contended that a violation of the Code of Conduct does not necessarily constitute a violation of the Regulations. I cannot accept this contention because the code of conduct is a part and parcel of Regulation 12 (1) and any breach of the code is necessarily a violation of the Regulations. The Model Code of Conduct is an inalienable part of the Insider Trading Regulations and cannot be construed to be something separate and unenforceable. Besides, Regulation 12 (4) clearly states that action taken against a person for the violation of the code shall not preclude the Board from initiating proceedings for violation of the Regulations for the same violation. If the noticee’s arguments were to be accepted, it would be tantamount to ordaining the position of a lame duck to the Board which would only have the power to stipulate a code of conduct but have no means whatsoever of enforcing it. This clearly cannot be the intent of the legislature and such an interpretation is abhorrent to the spirit of the law and as such cannot be adopted.

22. I will now deal with paragraphs 10 to 12 of the noticee’s submissions wherein the noticee has contended that that dissemination of information regarding outcome of the Board meeting conducted on April 23, 2006 occurred on the same day, i.e. on April 23, 2006.

23. I find from the SCN that the outcome regarding recommendation of dividend and demerger of FM radio business was sent by the company to BSE on April 23,

2006 (Sunday). However, the issue, in this case, is to determine exactly when the information was available to the public. The noticee has submitted that the outcome of the board meeting was informed by the company to the stock exchanges within fifteen minutes of the decisions taken at the board meeting held on April 23, 3006. As far as the stock exchanges, i.e. BSE and NSE are concerned, the information regarding recommendation of dividend was disseminated on April 24, 2006 at 9:53:25 a.m. and 9:40:44 a.m. respectively while the information regarding demerger of the FM radio business was disseminated on April 24, 2006 at 9:56:35 a.m. and 9:40:44 a.m. respectively. The noticee has not been able to produce any other evidence to indicate that the information was disseminated to the public on April 23, 2006. The noticee has submitted that the company had issued a press release, announcing the outcome of the Board meeting. However, this purported press release is the company's document and needs to be corroborated by some other document in order to establish that the information was in the public domain on April 23, 2006. In any case, the noticee has failed to provide a copy of the purported press release and also could not specify the time when the impugned press release was published. Besides, the noticee has not provided any other corroborative evidence to establish its contention. The noticee, in paragraph 11 of the written submissions, has contended that the information was published widely by the electronic media like news channels and the internet, on April 23rd itself. However, the noticee has been unable to provide any evidence to substantiate this contention.

24. I observe that contrary to these claims, the annexures provided by the noticee clearly show that the news was indeed uploaded and published on April 24, 2006 and not on April 23, 2006 as claimed by the noticee. The noticee has provided a print-out of an article from the financialexpress.com which was posted on April 24, 2006 at 0105 hours IST (http://www.financialexpress.com/news/Adlabs-Films-hives-off-FM-business-into-separate-firm/163439/). He has also provided printouts of articles from Hindu Business Line's online version (www.thehindubusinessline.com/2006/04/.../2006042404570100.htm), Times of India's e-paper (http://epaper.timesofindia.com), an article on Rediff.com (http://www.rediff.com/money/2006/apr/24fame/htm) which was published at 12:23 IST and another from OneIndia.com (http://news.oneindia.in/2006/04/24/adlabs-films-announces-demerger-fm-radio.html) which was published at 12:05 IST and all of them clearly depict the fact that the articles were published on April 24, 2006. In the

absence of any evidence to the contrary, I am compelled to conclude that the information was not accessible to the public on April 23, 2006.

25. Without prejudice to the aforesaid finding, even if, for argument's sake, I accept the noticee's contention that publication of the results of the meeting occurred on April 23, 2006 after conclusion of the board meeting, then the trading window should have been closed for 24 hours after the dissemination of the news to the public in terms of clause 3.2-4 of the Model Code of Conduct under the Regulations and as per information received from the company, the trading window was closed from April 21 to 11:30 a.m. on April 24, 2006. I find that the noticee had sold 10,00,000 shares of Adlabs Films Ltd. on April 24, 2006 through broker Gupta Equities Pvt. Ltd. on BSE, of which 7, 50,000 shares were sold between 10:11:30 to 10:12:34 and 2, 50,000 shares were sold at 15:16:44. This fact makes it abundantly clear, even if the argument of the noticee is accepted, that the sale of 7, 50,000 shares between 10:11:30 to 10:12:34 on April 24, 2006 was clearly in violation of the Model Code of Conduct as specified under Regulation 12 of the Insider Trading Regulations.

26. I also note that vide the noticee's first reply dated April 10, 2008, the noticee had *admitted* that the sale of shares by him before the expiry of 24 hours of the board meeting being made public, was purely inadvertent error on his part without any malafide intention.

27. Again, vide letter dated December 19, 2008, the noticee once more *admitted* to having sold the shares before the expiry of 24 hours of the outcome of the Board meeting being made public and added that it was purely an inadvertent and technical error without any malafide intention.

28. The noticee, vide letter dated December 19, 2008, stated that Adlabs had not informed him about the closure of the trading window. This argument cannot be accepted because the noticee is the Managing Director of the company and it is inconceivable that he was not aware about the decisions taken at the Board meeting and the subsequent closure of the trading window.

29. In view of the above, I find the noticee guilty of the violating Regulation 12(1) read with Clause 3.2-3 and 3.2-5 of code of conduct specified under Part A of Schedule I of the SEBI (Prohibition of Insider Trading) Regulations, 1992.

ISSUE 2: Whether the noticee is liable for monetary penalty under sections 15 HB of the Act?

30. I cannot accept the contention of the noticee as stated in his replies dated December 19, 2008 and April 10, 2008, that the violation was purely technical in nature. The prohibition against trading by insiders within 24 hours of information being made public is not the result of a mere whim on the part of legislating bodies but a well-considered policy to secure the interests of the investing public. The purpose of the prohibition is to prevent those who may happen to be in possession of information that is not publicly available, from using such information to their advantage in an unfair manner. Calling this prohibition a mere technicality would not just undermine the entire regulatory framework but also seriously jeopardize the interests of vulnerable investors.

31. The noticee, in paragraphs 22 and 23 of the written submissions, contends that Section 15 HB cannot be pressed into service for purposes of imposition of penalty because a fundamental requirement for application of Section 15 HB of the Act is that there ought to be a failure to comply with any provision of the Act, or rules or regulations made under the Act, and for which non-compliance, no separate penalty has been provided; that in the instant case, no failure of compliance with any provision of the Act or the Regulations has been made out and that the allegation is that the noticee had not complied with the Code of Conduct of the company-not that the noticee has violated any provision of the Act or the Regulations.

32. I find that it has been established that the noticee has violated the provisions of the Code of Conduct stipulated under the Insider Trading Regulations and that the Code of Conduct is very much an integral part of the Regulations and any violation of the Regulations results in the imposition of penalty under Section 15HB of the SEBI Act, in the absence of a separate penalising provision for the same and I am convinced that it is a fit case to impose monetary penalty u/s 15HB of the SEBI Act, 1992, which reads as under:

Penalty for contravention where no separate penalty has been provided

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

ISSUE 3*: *What quantum of monetary penalty should be imposed on the noticee, taking into consideration the factors mentioned in section 15J of SEBI Act?

33. While deciding the quantum of penalty, the factors laid down under Section 15J of SEBI Act have to be given due regard, which are as follows –
    (i) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of default,
    (ii) the amount of loss caused to an investor or group of investors as a result of the default and
    (iii) the repetitive nature of default.

34. I find that the disproportionate gain accrued by the noticee cannot be accurately quantified on the basis of the material on record. However, from the material available on record, I note that the noticee sold 10, 00,000 shares at an average price of Rs. 402.60 on BSE on April 24, 2006 and the total market volume was 18,39,171 shares. The next day (April 25, 2006 i.e. the day on which the trading window should have been opened) the weighted average price was Rs. 393.63 (as available from the BSE website). Thus the notional benefit accrued to the noticee was to the tune of Rs. 89, 70,000 (Rs. 402.60 – Rs. 393.63 = 8.97* 10, 00,000). Notwithstanding the monetary gain unfairly accrued by the noticee, the noticee deserves to be penalised for violation of the code of conduct and therefore, suitable penalty needs to be imposed. Any violation of the code of conduct that is specifically designed to protect the interests of investors cannot be treated lightly. It is of utmost importance that a sense of fair play be maintained in the market so that innocent investors do not find themselves at the receiving end of irregular conduct by entities related to the companies. In the instant case, the noticee is the Managing Director of the company and as such, he had a greater obligation to adhere to the laws made to protect the interests of investors. If lapses of this sort are not suitably penalised, it would amount to giving companies and their connected entities a *carte blanche* with regard to their activities that compromise the integrity of the securities market.

35. Considering the facts and circumstances of the case and the material available on record and the violation committed by the noticee, I find that a penalty of Rs. 1, 00, 00,000/- (Rupees One Crore only) under section 15HB of the SEBI

Act on Shri Manmohan Shetty would be commensurate with the violations committed by the noticee.

ORDER

36. In view of my findings mentioned hereinabove and after taking into account the facts and circumstances of the case and in exercise of the powers conferred upon me under Section 15 I (2) of the SEBI Act, 1992 read with Rule 5 of Adjudication Rules, I hereby impose a monetary penalty of Rs. 100, 00, 000/- (Rupees One Crore Only) on Shri Manmohan Shetty.

37. The penalty amount should be paid through a demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Ms. Anita Kenkare, GM, Investigation Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

38. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the noticee and also to the Securities and Exchange Board of India.

Date: June 9, 2010 **P. K. Bindlish**
Place: Mumbai **Adjudicating Officer**