

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - SD/AO/146/2009]

**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**

Against

Shri Hitesh Arun Kumar Choksi

PAN : ABIPC0956G

In the matter

M/s Fast Track Entertainment Limited.

BRIEF FACTS OF THE CASE :

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an investigation in respect of dealing in the scrip of M/s Fast Track Entertainment Limited (hereinafter referred to as '**FTEL**') for the period from January 01, 2004 to June 30, 2004. The scrip of FTEL was listed on The Stock Exchange, Mumbai, Ahmedabad Stock Exchange, Vadodara Stock Exchange (hereinafter referred to as BSE, ASE, VSE) respectively.
2. As per the Investigation Report (hereinafter referred to as IR) Shri Hitesh Arun Kumar Choksi (hereinafter referred to as the '**Noticee**') alleged to

have violated the Regulation 13(4) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulation, 1992 (hereinafter referred to as the '**PIT Regulations**') for which the adjudication proceeding has been initiated and therefore, the Noticee is liable for monetary penalty for the alleged violations, as prescribed under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER :

3. The undersigned was appointed as the Adjudicating Officer vide order of SEBI dated 20th February, 2008 under section 15-I of the SEBI Act r/w Rule 3 of SEBI (Procedure for holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Adjudicating Rules**') to inquire into and adjudge under Section 15A(b) of the SEBI Act, the alleged violations of Takeover Regulations and PIT Regulations committed by the Noticee.

SHOW CAUSE NOTICE/REPLY/PERSONAL HEARING :

4. A show cause notice (hereinafter referred to as '**SCN**') dated August 07, 2008 under Rule 4 of the **Adjudicating Rules** was issued to the Noticee asking it to show the cause as to why an enquiry should not be held against it and why penalty as prescribed be not imposed under Section 15A(b) of SEBI Act for its alleged violations of Regulation 13(4) r/w 13(5) of PIT Regulations. However, it is pertinent to note that the Noticee neither replied nor communicated to the undersigned, despite receiving the SCN. In this regard, it is observed that the SCN was issued through registered post with A/D and the said SCN was duly acknowledged.
5. Thereafter, considering the principles of natural justice and material available on record it was decided by the undersigned to conduct an

inquiry in the instant matter for which an opportunity of personal hearing was given to the Noticee. The Noticee was advised by the undersigned to attend the said personal hearing on August 07, 2009. However, the Noticee did not appear before the undersigned. However, the Noticee sought another date of hearing for appearance vide letter dt. 4th August, 2009. Subsequently, the Noticee was granted another opportunity of personal hearing on December 04, 2009. However, the Noticee did not appear before the undersigned. It is pertinent to mention that both the personal hearings had been scheduled at Ahmedabad, Regional Office, SEBI. However, the Noticee did not appear before the undersigned for personal hearing. As the Noticee neither filed any reply nor appeared before the undersigned, the matter is now being proceeded on the basis of the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS :

6. I have carefully perused the charges against the Noticee mentioned in the SCN and the materials available on record. In the instant matter, the following issues arise for consideration and determination.

- a. **Whether the Noticee had violated the above mentioned provisions of the PIT Regulations ?**
- b. **If, yes whether the Noticee is liable for monetary penalty prescribed under Sections 15A(b) of the SEBI Act for the aforesaid violations ?**
- c. **If, yes what should be the quantum of monetary penalty ?**

7. The relevant provisions of regulations alleged to have violated by the Noticee and the respective penal provisions of the SEBI Act which *inter alia* reads as under :

PIT Regulations :

Disclosure of interest or holding by directors and officers and

substantial shareholders in a listed companies -

13. (1)

(2)

(3)

(4) Any person who is a director or officer of a listed company, shall disclose to the company in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of :

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

SEBI Act :

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(a)

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.;

... ..

8. I have carefully persuaded the IR and the relevant documents available on

record. It is observed that the Noticee had hold 4,06,220 shares of FTEL on 20th November, 2003. It is observed that the share holding of the Noticee in the FTEL was reduced 1.29% total share capital FTEL as on 10th April, 2004 resulting his holding below 5% of total share capital of FTEL. Further, as the changed holding was more than 2% of total shareholding of FTEL, it is alleged that the Noticee had not followed the disclosure requirement as per Regulation 13(4) r/w 13(5) of PIT Regulations.

9. However, while examining the material available on record, more particularly the Annual Report of FTEL for the year 2003-04 it is observed that the Noticee had resigned from the directorship of FTEL. It is also observed from the relevant document filed by the FTEL u/s 302(2) of the Companies Act, 1956 regarding particulars of appointment of Directors, Managing Agents Secretories and Manager and changes among them that on 2nd July 2003, the Noticee resigned from Directorship of FTEL. Therefore, the Noticee was not acting as Director of FTEL on 10th April,04 i.e. when the shareholding reduced below 5% of the total shareholding of FTEL. Therefore, the facts from the available record don't support the allegations as leveled against the Noticee.
10. The basic purpose of disclosure requirement enumerates in the above said regulations is to bring about transparency in the securities market about shareholding by any body in a listed company. The alleged provisions PIT Regulations are applicable to the Director of the listed company who would have hold more than 5% of share capital and subsequently his shareholding would have decreased to less than 5% of the share capital of that particular company. However, in the instant matter the Noticee had hold 5.25% of share capital as on 20th November, 2003 and his holding was reduced on 10th April, 2004. The change in his shareholding pattern was occurred after the date of resignation of the

Noticee from the directorship of FTEL. Therefore, the alleged violation against the Noticee does not stand established.

ORDER

11. In view of the above, after considering all the facts and circumstances of the case, the alleged violation of the provisions of PIT Regulations, by Hitesh Arunkumar Choksi, as specified in the SCN does not stand established and therefore, the matter is, accordingly, disposed of.
12. In terms of the Rule 6 of the Adjudicating Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Dt: 14.12.2009

SANDEEP DEORE.

MUMBAI

ADJUDICATING OFFICER.