BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PKK/AO/164/2010]

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.

Against

Shri Ravi Panchal

PAN: Not Available

In the matter of

Fast Track Entertainment Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted an investigation into the dealings in the scrip of Fast Track Entertainment Limited (hereinafter referred to as **'FTEL'**) for the period from January 01, 2004 to June 30, 2004 hereinafter referred to as **'Investigation Period'**. During the investigation it was revealed that Shri Ravi Panchal held 3,79,094 shares of FTEL, as on June 24, 2004. On June 25, 2004 he acquired 1,16,400 shares which increased his total share holding in the company to 4,95,494 shares i.e. 6.46% of the total shares of FTEL. Though Mr. Panchal has acquired more than 5% shares or voting rights of FTEL on June 25, 2004, he has not made disclosure to FTEL and the Stock Exchanges in which FTEL was listed, as required under law. Further, during the

course of the investigation period it came to light that he had decreased his holdings by more than 2% of the total share holding of FTEL in the month of June 2004. He has not made disclosures as required under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as **'SAST Regulations'**) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'Insider Trading Regulations'**).

2. SEBI has therefore, initiated adjudication proceedings under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**Act**") against Mr. Panchal to inquire and adjudge the alleged violations of the provisions of Regulations 7 (1) read with 7 (2) of SEBI, SAST Regulations and Regulations 13 (1) and 13 (3) read with 13 (5) of Insider Trading Regulations, 1992.

Appointment of Adjudicating Officer

3. In view of the above SEBI vide order dated May 10, 2007 appointed Ms. Babita Rayudu as Adjudicating Officer **(AO)** under Section 15 I of the Act read with 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 15 A(b) of the SEBI Act, the alleged violation of the abovementioned provisions of the SEBI Act. Consequent to Mrs. Rayudu being sent on deputation, Mr. Sandeep Deore was appointed as the AO vide SEBI Order dated November 23, 2007. SEBI vide Order dated August 17, 2010 appointed the undersigned as the AO in the instant matter subsequent to the transfer of Mr. Deore to the Enforcement Department.

Show Cause Notice, Reply and Personal Hearing

4. The AO issued a notice dated August 01, 2008 (hereinafter referred to as '**SCN'**) under Rule 4 of the **Adjudicating Rules** to the Noticee to show cause as to why an inquiry should not be held against him and penalty be not imposed under Sections 15 A(b) of the SEBI Act, for the alleged violation of the provisions of Regulations 7 (1) read with 7 (2) of SEBI, SAST Regulations and Regulations 13 (1) and 13 (3) read with 13 (5) of Insider Trading Regulations, 1992 for which the adjudication proceeding has been initiated and therefore the Noticee is liable for monetary penalty as prescribed under section 15A(b) of the Act.

5. The allegation against the Noticee was that he held 3,79,094 shares of FTEL, as on June 24, 2004. On June 25, 2004 he acquired 1,16,400 shares which increased his total holding to 4,95,494 shares i.e. 6.46% of the total shares of FTEL. He has crossed the limit of 5% shares or voting rights of FTEL on June 25, 2004 and was required to make disclosure within two days to FTEL and the Stock Exchanges in which FTEL was listed. He had decreased his holdings by more than 2% of the total share holding of FTEL in the month of June 2004 and has not made disclosures as required under SAST Regulations and Insider Trading Regulations.

6. The SCN was sent to the Noticee through "Registered Post with A/d" and it returned undelivered. The SCN was later served on the Noticee by affixing the same at the Noticee's last known address on September 10, 2010 in accordance with Rule 7(c) of

the Adjudication Rules, 1995. However, neither the Noticee nor his representative submitted any reply to the SCN.

7. In the absence of any written reply submitted by the noticee, the AO considered the matter on the basis of the material available on record. The AO accordingly decided to conduct an inquiry. I granted an opportunity of personal hearing to the Noticee by issuing a letter dated October 04, 2010 advising him to appear before me on October 21, 2010 for the personal hearing. The notice of hearing was served on the Noticee by affixing the same at the Noticee's last known address, in accordance with Rule 7(c) of the Adjudication Rules, 1995. The Noticee however, did not appear before the undersigned for the said personal hearing.

8. In view of the above, I am proceeding with the matter on the basis of the material available on record.

Consideration of Issues, Evidence and Findings

9. I have carefully perused the charges made against the Noticee as mentioned in the SCN and the documents available on record. In the instant matter the following issues arise for consideration and determination:

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

10. Before proceeding, I would like to refer to the relevant provisions of the SEBI Act which reads as under:

Takeover Regulations

Acquisition of 5 per cent and more shares or voting rights of a company.

7(1) *Any acquirer, who acquires shares or voting rights which (taken together with shares of voting rights, if any, hekd by him) would entitle him to more than five per cent or ten per cent or fourteen per cent of fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*

.....

(2) *The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—*

(a) the receipt of intimation of allotment of shares; or

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

PIT Regulations :

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies – Initial Disclosure.

13(1) *Any person who holds more than 5% shares or voting rights in any listed company shall disclosed to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 4 days of : —*

(a) the receipt of intimation of allotment of shares; or

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

... ...

Continual disclosure.

(3) *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company [in Form C] the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*

... ...

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

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

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

11. I have carefully perused the charges made against the Noticee in the SCN and the documents available on record. I find that the Noticee held 3,79,094 shares of FTEL, as on June 24, 2004. On June 25, 2004 he acquired 1,16,400 shares which increased his total holding to 4,95,494 shares i.e. 6.46% of the total shares of FTEL. He has crossed the limit of 5% shares or voting rights of FTEL on June 25, 2004. He was required to make disclosure to FTEL and the Stock Exchanges in which FTEL was listed,

within the stipulated period of two days. It is therefore established beyond doubt that the Noticee failed to make disclosures to the company and the Stock Exchange where the shares of the target company are listed within two days of the acquisition of shares and therefore violated regulation 7(1) read with 7 (2) of the SAST Regulations.

12. I find from the records, it is mentioned that during the course of the investigation period it came to light that he had decreased his holdings by more than 2% of the total share holding of FTEL in the month of June 2004. However, there is no record as to show when the Noticee has sold shares constituting more than 2% of the share capital of FTEL which requires him to make disclosures as required under SAST Regulations and Insider Trading Regulations. I am therefore, inclined to give benefit of doubt to the Noticee. There are no sufficient evidence to establish that the Noticee has violated Regulations 13 (1) and 13 (3) read with 13 (5) of the Insider Trading Regulations.

13. The Noticee had neither refuted the charges leveled in SCN with respect to his violations of Regulations 7 (1) read with 7 (2) of SAST Regulations nor submitted any particulars or evidence of his compliance.

14. The basic purpose of disclosure requirement inherent in the above mentioned Regulations is to bring about transparency in the securities market and to keep the market informed about substantial acquisition or sale of share holding in a listed company. The Hon'ble SAT in the matter of ***Milan Mahindra Securities Pvt. Ltd. Vs, SEBI*** *(Appeal No. 66 of 2003 and order*

dated November 15, 2006.), ***regarding the importance of disclosures, has observed that "the purpose of these disclosures is to bring about transparency in the transactions and assist the regulator to effectively monitor the transactions in the market". Thus any violation of the disclosure requirements has to be view seriously.***

15. From the foregoing, I find the charges against the Noticee are established beyond doubt. Therefore, the Noticee violated Regulation 7 (1) read with 7 (2) of the SAST Regulations. The violations as above warrant imposition of penalty as per the provisions of Section 15 A (b) of the Act.

16. The Hon'ble Supreme Court of India in the matter of ***SEBI v. Shri Ram Mutual Fund*** **[2006] 68 SCL 216(SC)** *inter alia* held: ***"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow."***

17. Thus, the aforesaid violations by the Noticee make him liable for penalty u/s. 15 A (b) of SEBI Act, 1992 which reads as follows:

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rule or regulations made there under, —*

… … …

(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.;

18. While imposing monetary penalty it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:

"15J - Factors to be taken into account by the adjudicating officer:

While adjudging quantum of penalty under section 15-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."

19. It is difficult to ascertain the disproportionate gain or unfair advantage to the Noticee, accrued due to the aforesaid non-disclosure. Further, it is difficult to establish repetitive nature of the default made by the Noticee but it is a fact that the Noticee failed to make the disclosure under SAST Regulations. On the basis of available document on record, it is established that the Noticee failed to fulfill regulatory requirements under SAST Regulations for which the Noticee should be penalized.

Order

20. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred

upon me U/S 15-I (2) of the SEBI Act, 1992, I hereby impose a penalty of ₹ 1,00,000/- (Rupees One Lakh only) on the Noticee. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

21. The penalty shall be paid by way of 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 Division Chief, Investigation Department (ID2), Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

22. In terms of the provisions of Rule 6 of the Adjudicating Rules the copies of this order are sent to Shri Ravi Panchal and also to Securities and Exchange Board of India.

Date: November 08, 2010 **P. K. KURIACHEN**

Place: Mumbai **ADJUDICATING OFFICER**