

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. ISD/ KBPL-CJ/AO/DRK-DS/EAD3- 458/01-2014]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against
Ms. Chanchal Jain
[PAN No.: ABSPJ9360K]
15, Ground Floor,
357, Kothari Mansion,
S V P Road, Khetwadi,
Mumbai - 400004

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), conducted an investigation in the scrip of Koffee Break Pictures Ltd. (hereinafter referred to as 'the company') during the period October 01, 2011 to November 30, 2011 (hereinafter referred to as 'Investigation Period'). The shares of the company are listed at BSE.

APPOINTMENT OF ADJUDICATING OFFICER

2. I was appointed as Adjudicating Officer under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge under Section 15A(b) of the SEBI Act, the alleged violation of Regulation 13(4A) read with Regulation 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations') committed by Ms. Chanchal Jain (hereinafter referred to as 'noticee'), who is a promoter of the company. The order appointing undersigned

as the Adjudicating Officer was communicated vide communiqué dated May 10, 2013.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. A Show Cause Notice no. A&E/EAD-3/DRK/DS/18038/2013 dated July 23, 2013 (hereinafter referred to as 'SCN') was served on the noticee in terms of the provisions of Rule 4 of the Rules, requiring the noticee to show cause as to why an inquiry should not be held against the noticee and why penalty, if any, should not be imposed on her under Section 15A(b) of the SEBI Act for the alleged violation of the provision of Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations.
4. SEBI observed that during the period October 03, 2011 – October 31, 2011 the noticee had received 1,00,000 shares from Metex Marketing Pvt. Ltd. which is also one of the promoters of the company.
5. Investigation Report observed that the noticee did not make any disclosure to the company and to the stock exchange with respect to the transfer of the aforesaid shares in terms of Regulation 13(4A) read with 13(5) of the PIT Regulations.
6. The aforesaid SCN sent through Hand Delivery Acknowledgment Due (HDAD) and the said SCN was returned undelivered with the remark "shifted". Thereafter, vide letter dated August 01, 2013, the said SCN was forwarded to the noticee on her recent address obtained from SEBI – Integrated Surveillance Department. The said letter was sent through HDAD and was served on the noticee.
7. Since no reply was received, vide hearing notice dated August 30, 2013, the noticee was advised to file the reply to SCN on or before September 12, 2013. and was also provided with an opportunity of being heard on September 17, 2013 at 11.30 AM at SEBI Bhavan, Mumbai. The said hearing notice was served on the noticee via HDAD and proof of service available on record.
8. Subsequently, vide letter dated September 10, 2013, the noticee filed its reply and made the following submissions:
 - a. I have received 1,00,000 shares from Metex Marketing Pvt. Ltd.

- b. I submit that disclosure of purchase of 1,00,000 shares from Metex Marketing Pvt. Ltd. remained to be disclosed which may please be considered as a mere technical lapse and was unintentional. It may be appreciated that disclosures prior in time and post in time to alleged non-disclosure of 1,00,000 shares have been duly made.
 - c. The act of non-disclosure on one particular instance has neither led to wrongful gains for us nor have the investors suffered any loss on account of said omission. It was merely a technical lapse.
- 9. However, the noticee did not appear for the aforesaid hearing. Subsequently, vide hearing notice dated December 13, 2013, the noticee was informed that the noticee has failed to appear for the hearing on September 17, 2013 was granted a final opportunity of personal hearing and was advised to attend the hearing on December 27, 2013 at 04.00 PM at SEBI Bhavan, Mumbai. The said hearing notice was served on the noticee through HDAD and proof of service available on record.
- 10. Vide letter dated December 22, 2013, the noticee again forwarded the reply dated September 10, 2013. Vide the said letter, the noticee further submitted that the Authorised representative of the noticee Ms. Mamta Patil from Juris Matrix had attended the hearing on behalf of the noticee on September 17, 2013

CONSIDERATION OF EVIDENCE AND FINDINGS

- 11. I have taken into consideration the facts and circumstances of the case, and the material available on record.
- 12. It was alleged in the SCN that the noticee did not make disclosures of her change in shareholding in the company to the company and the stock exchange as required under Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations.
- 13. With respect to the personal hearing granted to the noticee, the noticee has submitted that the authorised representative of the noticee Ms. Mamta Patil, Advocate, Juris Matrix (hereinafter referred as 'Mamta') had appeared on behalf of the noticee for the hearing on September 17, 2013. However, it is observed

from the records neither we have received any letter from the noticee authorising Mamta to make submissions on behalf of the noticee, nor Mamta made any submissions on behalf of the noticee on September 17, 2013. Mamta appeared only on behalf of Metex Marketing Pvt. Ltd. on September 17, 2013 and did not make any submissions on behalf of the noticee as she was not authorised by the noticee to do so. Thus, the submission of the noticee that the hearing granted to the noticee was attended by her authorised representative is not true.

14. Further, as per the requirements of Regulation 13 (4A) read with Regulation 13(5) of the PIT Regulations, the noticee was required to make the disclosures regarding the change in her shareholding in Form D of the PIT Regulations to the company and to stock exchanges where the securities of the company are listed within two working days.
15. The noticee has submitted that the disclosure with respect to the purchase of 1,00,000 shares is yet to be made and the said non-disclosure may be treated as technical lapse. The noticee has further submitted that the said non-disclosure was unintentional and has not caused any loss to the investors.
16. At this juncture I would like to quote the order of Hon'ble Securities Appellate Tribunal in the matter of Milan Mahindra Securities Private Limited vs SEBI (Order dated November 15, 2006 Appeal No. 66 of 2003) "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. We cannot therefore subscribe to the view that the violation was technical in nature."
17. In view of the above facts and material made available on record, it can be concluded that the noticee has failed to comply with the provisions of Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations with respect to the purchase of 1,00,000 shares. The text of the said provision is as follows:-

"(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed 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 of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) 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), (4) and (4A) shall be made within two 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."

18. The aforesaid non-disclosure makes the noticee liable for penalty under Section 15A(b) of the SEBI Act which is reproduced below:

"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,—

...

(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;"

19. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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.*

20. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the noticee or loss caused to the investors as a result of the failure on the part of the noticee to make the disclosures are not available on record. Further, it may also be added that it is difficult to quantify the unfair advantage made by the noticee or the loss caused to the investors in a default of this nature.

21. Having considered the facts and circumstances of the case, submissions made by the noticee and after taking into account the factors under Section 15J of the SEBI Act, 1992, I find that a penalty of ₹2,62,500 [Rupees Two Lakhs Sixty-two Thousand Five Hundred Only] on the noticee would commensurate for failure to make disclosures by the noticee.

ORDER

22. In exercise of the powers conferred under Section 15-I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby, impose a penalty of ₹2,62,500 [Rupees Two Lakhs Sixty-two Thousand Five Hundred Only] on Ms. Chanchal Jain in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for the failure to comply with the provisions of Regulation 13(4A) read with Regulation 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the failure of the noticee to make the disclosures.
23. 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 the Deputy General Manager, ISD, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
24. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are being sent to Ms. Chanchal Jain and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: January 29, 2014

**D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**