

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO.: - SD/AO/145/2009]**

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**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**

**M/s Unique Lease Finance Limited.**

**PAN : AAACU3356J**

**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) M/s Unique Lease Finance Limited (hereinafter referred to as the '**Noticee**') alleged to have violated the Regulation 7(1) read with 7(2) of the SEBI (Substantial

Acquisition of Shares and Takeovers) Regulation, 1997 (hereinafter referred to as the '**Takeover Regulations**') and Regulation 13(1) 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 20<sup>th</sup> 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 violations of Regulation 7(1) r/w 7(2) of Takeover Regulations and Regulation 13(1) 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. 4<sup>th</sup> 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. As the Noticee is placed in Vadodara, it was convenient for the Noticee to appear before the undersigned. Therefore, it was expected from the Noticee to appear before the undersigned for personal hearing. 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 Takeover Regulations and 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 :

#### **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 or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen 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 disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 4 working 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.*

*... ..*

***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 7,00,000 shares of FTEL on 18<sup>th</sup> November,2003. Further, as on 31<sup>st</sup> March 2004 the share holding of the Noticee in the FTEL was also 9.05% of the total share capital of the FTEL resulting of which the Noticee had crossed the threshold limit of 5% for the disclosure requirement as per Regulation 7(1) r/w 7(2) of Takeover Regulations and Regulation 13(1) of PIT Regulations. As per the respective regulations, the Noticee was required to disclose its share holding in FTEL to the company FTEL and to the stock exchanges in which the scrip of FTEL was listed. However, the Noticee failed to make the disclosure as per the regulatory requirement. It is also observed from the available record that the Noticee had not disclosed its share holding pattern as per regulation 7(1) r/w 7(2) of Takeover Regulations to the BSE which was confirmed by the concerned exchange.
9. In the instant proceedings as mentioned hereinabove, that the Noticee has not filed any reply to the SCN issued by the undersigned, to defend itself from the violations as alleged in the SCN. In this regard, I would like to rely upon the findings of the Hon'ble Securities Appellate Tribunal in the matter of **Classic Credit Limited Vs. SEBI** (Appeal No.68 of 2003, Date of Decission: December 8, 2006) regarding the significance of the filling the reply to the show cause notice, in which it is stated that "*the appellant did not file any reply to the second show cause Notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*". Further, it is also observed from the

- submission of the Noticee before the Investigating Authority, SEBI that the Noticee had admittedly submitted regarding the not compliance of the required SEBI Regulations for disclosure. After taking all these facts into consideration, it is established that the Noticee has violated the alleged provisions of Takeover Regulations and PIT regulations.
10. The Noticee has not filed any reply to the SCN issued by the undersigned. However, the Noticee, after receiving the second notice of personal hearing, requested the undersigned to drop the allegations against it citing the SEBI Order dated October 12, 2009 passed against it. The Noticee has also sent a copy of the said SEBI Order to the undersigned. However, the said Order has been examined by the undersigned and found that the instant proceedings is separate from the said order as passed by WTM, SEBI against the Noticee. It is observed that the said SEBI Order was pertaining to the violations of various provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 where as the instant proceedings were pertaining to the violations of SEBI Takeover Regulations and PIT Regulations. Thus, the request of the Noticee for dropping the instant proceedings is not tenable and therefore can't be acceded with.
  11. Further, it is also derived from the said SEBI Order that the Noticee never appeared before the competent authority of SEBI and therefore, WTM, SEBI had passed an ex-parte order dt. 12.10.2009 against the Noticee. Therefore, by considering these facts, it is seen that the Noticee neither appeared for the proceedings conducted by SEBI nor appeared before the undersigned in spite of two opportunities given to it, the facts compelled the undersigned to proceed on the material available record.
  12. The basic purpose of disclosure requirement enumerated in the above said regulations is to bring about transparency in the securities market about acquisition of a substantial percentage of shareholding by any body

in a listed company. The Takeover Regulations and PIT Regulations are applicable to anyone whoever crosses the stipulated percentage of stake in a listed company. In my view, the Noticee was under obligation to comply with the regulatory framework as prescribed under various regulations by the SEBI whenever it had bought a substantial stake in a listed company, FTEL. The basic premise of disclosures under Regulation 7(1) r/w 7(2) of Takeover Regulations and Regulation 13(1) of PIT Regulations is to bring about transparency in the securities market and to make the market informed about the substantial stakeholders in a listed company.

13. In this regard, I would like to rely upon the findings of Hon'ble SAT in the matter of ***Milan Mahendra Securities Pvt. Ltd. Vs SEBI*** (Appeal No. 66 of 2003 and Order dated November 15, 2006 ) regarding the importance of disclosures, in which SAT 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 I am of view that by not disclosing its shareholding pattern in a listed company to the exchange and to the company, the Noticee violated both Takeover Regulations and PIT Regulations.
14. The Hon'ble Supreme Court of India in the matter of ***SEBI Vs. Shri Ram Mutual Fund*** [2006] 68 SCL 216 (SC) held that *"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"*.
15. Therefore, in my opinion, it is a fit case to impose monetary penalty under section 15A(b) of the SEBI Act. However, for determining the quantum of monetary penalty under section 15A(b), the factors prescribed under section 15J of the SEBI Act are to be considered 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.”*

16. 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 required disclosures under Takeover Regulations and PIT Regulations. On the basis of available document on record, it is established that the Noticee failed to fulfill regulatory requirements under above said Regulations. As enumerated above, the transparency in the transactions should be maintained by the each and every participant of the securities market for which the disclosure requirements are mandated in the various regulations of SEBI. In the instant matter, as the Noticee did not file any disclosure regarding its share holding pattern in FTEL to the stock exchange in which the scrip of FTEL were listed and to FTEL as well, I am of opinion that the Noticee violated the Takeover Regulations and PIT Regulations, for which the Noticee should be penalized.

**ORDER**

17. 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 Act, I hereby impose a penalty of Rs. 1,50,000/- (Rupees One lakh and Fifty Thousand Only) on M/s Unique Lease Finance Limited u/s 15A(b) of the SEBI Act. I am of view that the said penalty is commensurate with the violations made by M/s Unique Lease Finance Limited.



18. The above penalty amount shall be paid through a duly crossed 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 General Manager, Investigation Department-ID 8, Securities and Exchange Board of India, SEBI Bhavan, Plot No, C4-A, "G" Block, Bandra Kurla Complex, Bandra(East), Mumbai-400 051.
19. 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.**