

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. MC/CB/9/2018]**

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**UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.**

In respect of –

**Tiger Farms Private Limited (PAN AACCT9108R)** having address at – New No. 5/1, (Old No. 3/1), 6th Cross Street, CIT Colony, Mylapur, Chennai – 600 004

In the matter of *Binny Limited*

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) conducted examination in the scrip of Binny Limited (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) for the period January 01, 2014 to January 31, 2015 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed violation of Regulation 13(2A) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) by Tiger Farms Private Limited (hereinafter be referred to as, the “**Noticee**”).

**APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI initiated adjudication proceedings and appointed Mr. Suresh Gupta, Chief General Manager as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the “**Adjudication Rules**”) vide order dated March 01, 2017 to inquire into and adjudge under Section 15A (b) of the SEBI Act against the Noticee for the alleged violation of Regulation 13(2A) of the PIT Regulations. Subsequently, the undersigned was appointed as the

Adjudicating Officer on April 26, 2018 which was communicated *vide* order dated June 19, 2018.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

3. Show Cause Notice No. EAD/SG/VS/2181/2018 dated January 19, 2018 (hereinafter be referred to as, the “**SCN**”) under Rule 4(1) of the Adjudication Rules was served upon the Noticee by way of affixture on March 14, 2018 to show cause as to why an inquiry should not be held and penalty be not imposed against them under Section 15A (b) of the SEBI Act for the alleged violation of Regulation 13(2A) of the PIT Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
  - a) The Noticee acquired 5750 shares of the Company in off market in physical form on January 24, 2014. It was also observed in the examination that the Noticee was included in the Promoter Group of the Company with effect from January 2014.
  - b) As a result of such acquisition, the Noticee, being a person belonging to the promoter group of the Company, was required to submit disclosure to the Company of the number of shares held within two days of such acquisition. However, the Noticee, allegedly, failed to submit the same.
  - c) The Company, *vide* e-mail dated November 21, 2017 confirmed that Noticee made a disclosure of shareholding under Regulation 13(2A) of the PIT Regulations only on August 03, 2017.
  - d) It was alleged that the aforesaid delay in disclosure regarding its shareholding by the Noticee was in violation of Regulation 13(2A) of the PIT Regulations, text of which is mentioned as below:

#### ***SEBI (Prohibition of Insider Trading) Regulations, 1992***

*13. (2A) Any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group.*

5. It was stated in the SCN that the aforesaid alleged violation, if established, would make the Noticee liable for monetary penalty under Section 15A (b) of the SEBI Act.
6. The aforesaid SCN was served upon the Noticee by way of affixture at the address of the Noticee on March 14, 2018 and Affixture Report of the same is available on record. However, no reply was received from the Noticee in respect of the SCN.
7. On appointment of the undersigned as the Adjudicating Officer in the instant case, an opportunity of hearing was provided to the Noticee in the interest of natural justice on July 10, 2018 and the same was communicated to the Noticee *vide* Notice of Hearing dated June 13, 2018 which was served upon the Noticee by way of affixture, report of which is available on record.
8. In response to the Notice of Hearing dated June 13, 2018, the Noticee submitted a letter dated June 20, 2018. In its letter, the Noticee stated that it had changed its address for communication and as a result of which, the SCN was not delivered to the Noticee. The Noticee also stated that it made disclosure regarding acquisition of 5750 shares of the Company under Regulation 13(2A) of the PIT Regulations on August 03, 2017. The Noticee also stated that this was due to inadvertence and with no *mala fide* intention.
9. Thereafter, another Notice of Hearing dated June 28, 2018 was served upon the Noticee through which, another opportunity of hearing was provided to the Noticee on July 12, 2018. A copy of the SCN was also provided to the Noticee along with the Notice of Hearing dated June 28, 2018.
10. The Noticee filed its reply by way of letter dated July 04, 2018 wherein, it furnished copy of disclosure dated August 03, 2017 made to the Company under Regulation 13(2A) of the PIT Regulations and confirmed its attendance for the hearing scheduled on July 12, 2018. However, the Noticee, *vide* e-mail dated July 12, 2018, requested for an adjournment in hearing citing unavailability of legal counsel.
11. An opportunity of hearing was further granted to the Noticee on September 06, 2018 which was communicated by way of Notice of Hearing dated August 28, 2018.

12. The hearing scheduled on September 06, 2018 was attended by the authorized representative of the Noticee. During the course of hearing, the authorized representative of the Noticee reiterated the written submissions filed by way of letter dated July 04, 2018. It was also submitted that the information about shareholding of the Noticee in the scrip of the Company was available in public domain by March 31, 2014.
13. Since inquiry / hearing in the instant matter is concluded; keeping into account the allegations levelled in the SCN, submissions of the Noticee towards the SCN and material available on record, I hereby proceed to decide the case on merit.

### **CONSIDERATION OF ISSUES AND FINDINGS**

14. The issues that arise for consideration in the instant matter are:

**Issue No. I** Whether the Noticee had failed to make mandated disclosure under the PIT Regulations as alleged in the SCN?

**Issue No. II** If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?

**Issue No. III** If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

**Issue No. I** **Whether the Noticee had failed to make mandated disclosure under the PIT Regulations as alleged in the SCN?**

15. I note that the Noticee was part of the promoter group of the Company in terms of Regulation 2(zb) of the SEBI (Issue of Capital Disclosure Requirements) Regulations, 2009. I also note that the Noticee has admitted acquiring 5750 shares of the Company which amounted to 0.03% of the total share capital of the Company on January 24, 2014.

16. Regulation 13(2A) of the PIT Regulations requires any person who is a part of promoter group of a listed company to disclose to the company the number of shares or voting rights held by him within two working days of becoming a person belonging to promoter group. Thus, I am of the view that the Noticee, being a part of promoter group of the

Company, ought to have disclosed its shareholding to the Company within 2 days of acquisition of 5750 shares of the Company in terms of Regulation 13(2A) of the PIT Regulations.

17. I note from the Annexure C of the SCN (i.e. e-mail confirmation of the Company dated November 21, 2017) that no disclosure in Form B under Regulation 13(2A) of the PIT Regulations was filed by the Noticee. The Company also notified SEBI *vide* the aforesaid e-mail that it received such disclosure under Regulation 13(2A) of the PIT Regulations only on August 03, 2017. I also note from the Noticee's admission in its reply dated July 04, 2018 that disclosure under Regulation 13(2A) of the PIT Regulations was made by the Noticee only on August 03, 2017.

18. I observe that the Noticee, in its letter dated June 20, 2018 submitted that the delay in aforementioned disclosure was due to inadvertence and was with no *mala fide* intention. At this juncture, I find it relevant to refer to the Securities Appellate Tribunal's (hereinafter be referred to as, the "**Hon'ble SAT**") order in the matter of **Ambaji Papers Private Limited & Ors. v. Adjudicating Officer, Securities and Exchange Board of India** (Appeal No. 201 of 2013 dated January 15, 2014) wherein, it held, "*To this extent, the appellants, though inadvertently and without any intention, have defaulted in complying with the regulations regarding disclosures in question in our considered view and in the facts and circumstances of the present cases. The infraction, although venial in nature, is an infraction nonetheless*". Thus, I am of the view that the delay in aforementioned disclosure is a non-compliance of statutory obligation by the Noticee, which is a violation notwithstanding inadvertence and no *mala fide* intention on the part of Noticee.

19. In view of the aforesaid, it is established that the Noticee had failed to make disclosure within 2 days of acquisition of shareholding on January 24, 2014 which was required under Regulation 13(2A) of the PIT Regulations to the Company.

**Issue No. II                      If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?**

**&**

**Issue No. III      If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?**

**20.** Since failure of the Noticee in making disclosures to the Company under Regulation 13(2A) of the PIT Regulations is established, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) of the SEBI Act on the Noticee, text of which is reproduced as under:

***SEBI Act***

*“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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.”*

**21.** While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

- 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.

**22.** On the basis of material available on record, it is not possible to assess the amount of unfair advantage made or the amount of loss caused to an investor or group of investors as a result of the violation by the Noticee.

**23.** However, I also take note of the fact that the Noticee had acquired a very miniscule number of shares in the scrip of the Company, i.e. 5750 shares amounting to 0.03% of the total share capital of the Company. I also note that no previous violation could be attributed to the Noticee on the basis of material available on record.

24. While it is established that the Noticee did not make disclosure to the Company under Regulation 13(2A) of the PIT Regulations; I find it relevant to note the submission of the Noticee that information relating to Noticee's acquisition of 5750 shares in the scrip of the Company was available in public domain at the end of financial quarter, January – March, 2014.
25. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors thereof, I am of the view that a penalty of ₹1,00,000 will be commensurate with the violations committed by the Noticee.

## ORDER

26. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹1,00,000/- (Rupees One Lakh only) upon the Noticee, i.e. Tiger Farms & Enterprise Pvt. Ltd. under Section 15A(b) of the SEBI Act for violation of Regulation 13(2A) of the PIT Regulations.
27. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

28. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:
- Name and PAN of the Noticee
  - Name of the case / matter

- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

**29.** Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

**Date : September 24, 2018**

**Place : Mumbai**

**(Maninder Cheema)**

**Adjudicating Officer**