

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

**[ADJUDICATION ORDER NO.: - SD/AO/91/2009]**

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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**

**Ms. Rup V Chinoy. (PAN :AAAPC8275B)**

**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**') conducted an investigation in respect of buying, selling and 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. The Investigation Report (hereinafter referred to as IR) revealed that Ms. Rup V Chinoy (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) and 13(3) 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 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 notice to show cause dated August 01, 2008 under Rule 4 of the **Adjudicating Rules** was issued to the Noticee asking to show the cause as to why an enquiry should not be held against her and penalty as prescribed be not imposed under Section 15A(b) of SEBI Act for her violations of Regulation 7(1) r/w 7(2) of Takeover Regulations and Regulation 13(1),13(3) r/w 13(5) of PIT Regulations.
5. The Noticee replied to the above show cause notice vide the letter dt. 6<sup>th</sup> January, 2009 denying the allegation made against her. Further, as per the principle of Natural Justice, the Noticee was granted opportunities of personal hearing on April 01, 2009 and July 20, 2009. On the scheduled date of personal hearings the authorized representatives Mr. Y P Trivedi, Mr. K J Limathwala and Mr. Pankaj R Toprani appeared before the undersigned and made submissions.

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

6. In this instant matter the following issues arise for consideration :
- a. Whether the Noticee had violated the 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 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 or 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 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.

... ..

***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 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 observed from the documents available on record that the Noticee acquired 5,10,000 shares i.e. 6.59% holding in the scrip of FTEL on March 04, 2004 and crossed the threshold limit of 5% for disclosure as per Regulation 7(1) r/w 7(2) of Takeover Regulations and Regulation 13(1) r/w 13(5) of PIT Regulations. The Noticee was required to disclose her share holding in the scrip of FTEL to the stock exchanges and to the company FTEL. However, the Noticee failed to make any disclosure. BSE has also confirmed that the Noticee had not made any disclosure as per Takeover Regulations.
9. The Noticee replied vide its letter dt. 6<sup>th</sup> January, 2009 that she had never acquired the shares of FTEL with an intention to take over the company FTEL. The basic purpose of the above said regulations is to bring about transparency and disclosures in the market about acquisition of a substantial percentage of shareholding in a listed company. The Takeover Regulations and PIT Regulations are applicable to anyone who buys a substantial stake in a listed company and not only on the persons who wish to make a acquisition. Thus the Noticee's contentions about the intention of taking over the company do not stand good and hence cannot be considered. The Noticee is obliged to comply with the regulatory framework

as prescribed under various regulations by the SEBI whenever it has bought a substantial stake in a listed company. The basic premise of disclosures under Regulation 7(1) of Takeover Regulation and Regulation 13(1) of PIT is to bring about transparency in the market and to make the market informed about the substantial stakeholders in a company.

10. It is noted from the demat statement of the Noticee that her share holding had been changed/alterd by way of sale and acquisition of shares of FTEL. It is pertinent to note that these changes in her shareholding of FTEL were more than 2%. In this regard, the Noticee neither made any disclosure to the company FTEL as per Regulation 13(3) of PIT Regulations. The Noticee has not disputed this fact. Infact at the time of the personal hearing held on 20 July, 2009 the Noticee had admitted that no disclosures were made to BSE and FTEL. The said hearing was reduced into writing by way of statement which was duly signed by the authorized representatives of the Noticee and the copy of the same was provided to them.
11. Further, in her reply, the Noticee had contented that the violation was of technical in nature. 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 ), 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. We cannot therefore subscribe to the view that the violation was technical in nature. "* Thus I am of view that the by not disclosing the shareholding pattern to the exchange and to the company, the Noticee violated both Takeover Regulations and PIT Regulations.

12. 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"*.
13. Therefore, I am of view that 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."*
14. 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 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 her share holding pattern in FTEL to the stock exchange in which the scrip of FTEL were listed and to FTEL, I am of opinion that the Noticee violated the Takeover Regulations and PIT Regulations, for which the Noticee should be penalized.

### **ORDER**

15. 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. 1,00,000/- (Rupees One Lakh Only) on Ms. Rupri V Chinoy u/s 15A(b) of the SEBI Act. I am of view that the said penalty is commensurate with the violations made by Ms. Rupri V Chinoy.
16. 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.
17. 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: 20.08.2009**

**MUMBAI**

**SANDEEP DEORE.**

**ADJUDICATING OFFICER.**