

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

**[ADJUDICATION ORDER NO. ISD/ KBPL-MMPL/AO/DRK-DS/EAD3-401/67-2013]**

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**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  
**Metex Marketing Pvt. Ltd.**  
**[PAN No.: AADCM9717A]**  
357, Kothari Mansion,  
SVP Road,  
**Mumbai – 400 004**

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**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 the Adjudicating Officer and the same was communicated vide proceedings of the Whole Time Member appointing Adjudicating Officer dated May 10, 2013 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 Metex Marketing Pvt. Ltd. (hereinafter referred to as 'noticee').

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

3. A Show Cause Notice no. A&E/EAD-3/DRK/DS/482/2013 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 it 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. It was stated in the SCN that during the investigation period the noticee had transferred 14,04,000 shares to the following entities:

Entity Name	Shares Transferred	Promoter/Non-Promoter
Rashi Jain	4,50,000	Promoter
Chanchal Jain	1,00,000	Promoter
Surendrakumar Dadha	8,54,000	Non-Promoter

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 SCN stated that the reply shall reach within 15 days from date of receipt of the notice, failing which it shall be presumed that the noticee has no reply to submit and the matter shall be proceeded on the basis of material available on record. The aforesaid SCN sent through Hand Delivery Acknowledgment Due (HDAD) and the said SCN was served on the noticee.
7. Vide hearing notice dated August 30, 2013, the noticee was informed that no reply has been received and 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 11.00 AM at SEBI Bhavan, Mumbai. The said hearing notice was served on the noticee 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. We deny having sold 14,04,000 shares during the investigation period 03.10.2011 – 31.10.2011 as alleged in the SCN. During the said period, we had sold 7,50,000 shares to the following entities:

<b>Date</b>	<b>Name of the Entity</b>	<b>Shares Transferred</b>	<b>Promoter/Non-Promoter</b>
03.10.2011	Chanchal jain	1,00,000	Promoter
05.10.2011	Rashi Jain	2,50,000	Promoter
19.10.2011	Rashi Jain	1,00,000	Promoter
21.10.2011	Surendrakumar Dadha	2,00,000	Non Promoter
21.10.2011	Rashi Jain	1,00,000	Promoter
	<b>Total</b>	<b>7,50,000</b>	

- b. It is submitted that the balance 6,54,000 shares were sold in the month of November which do not fall within the aforesated period (03.10.2011 – 31.10.2011).
- c. We deny the allegation levied thereon of failing to make any disclosure with respect to transfer of shares. We state that apart from the sale of 3,00,000 shares on 21.10.2011, all other sale transactions were duly intimated to BSE under the PIT Regulations.
- d. Emails were duly marked alongwith relevant enclosures and Form D to the designated email id of BSE, being corp.relations@ bseindia.com. It is in fitness of things to assume that once an email is sent from our server, presumption of receipt thereof is admitted and acknowledged as laid down under Section 13(3) of the Information Technology Act, 2000 which states that :

*(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.*

- e. We submit that disclosure of sale of 3,00,000 shares viz 2,00,000 to Mr. Surendrakumar Dadha and 1,00,000 to Mrs. Rashi Jain on 21.10.2011 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 3,00,000 shares have been duly made.
  - f. Further, it is observed from the website of BSE that the disclosures duly made by us remain to be uploaded by BSE which is a lacuna on the part of BSE as we have duly complied with the reporting norms laid down under Regulations.
9. Vide letter dated September 11, 09, 2013, the noticee authorised Ms. Mamta Patil, Advocate, Juris Matrix (hereinafter referred to as 'AR') to appear on behalf of the noticee. The AR of the noticee appeared for the hearing on September 17, 2013 and made the following submissions:
- a. During the investigation period, the noticee sold 7,50,000 shares only. The balance 6,54,000 shares were sold in the month of November.
  - b. The noticee made all but two disclosures to the Stock Exchange (BSE in the present case) as well as to the company as required under Regulation 13(4A) read with 13(5) of the SEBI (PIT) Regulations, 1992. As per the corporate policy of BSE, the said disclosures were made to BSE via email to the designated email id of BSE and a copy was also marked to the company as well at [koffeebpl@yahoo.com](mailto:koffeebpl@yahoo.com), the designated email id of the company. A clarification was sought as to whether the aforesaid email id is the designated email id of the company or not. The AR has undertaken to furnish the clarification with respect to the same.
  - c. With respect to the non-disclosure of 3,00,000 shares, the AR submitted that the said non-disclosure may be considered as a mere technical lapse and was unintentional and thus a lenient view may be taken.
  - d. The AR undertook to submit the aforesaid clarification on or before September 23, 2013.
10. Vide letter dated September 17, 2013, the noticee forwarded a copy of the letter from the company stating that [koffeebpl@yahoo.com](mailto:koffeebpl@yahoo.com) is the designated email id

of the company. Further, the said letter also confirmed that the Company had received the disclosure with respect to the change in shareholding of the noticee via email.

### **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 its 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. 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 its 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 of the sale of shares.
14. The noticee has submitted that it had intimated the company and BSE about the sale of 3,50,000 shares, 1,00,000 shares, 3,00,000 shares and 3,54,000 shares vide email dated October 06, 2011, October 22, 2011, November 05, 2011 and November 26, 2011 respectively. However, from the record it seems BSE has not uploaded the same on its website. It is observed that website of BSE provides that corporate filing can be made through e-mail. However, despite the disclosures being made via e-mail, the same were not uploaded on the website. A copy of the emails sent to the designated email ids of the BSE and the company has been furnished. Therefore, it appears that the noticee has made the disclosures to the company and BSE.
15. Further, the noticee has also accepted that the disclosures with respect to sale of 3,00,000 shares are yet to be made and the same may be treated as technical in nature.

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 sale of 3,00,000 shares only. 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 ₹1,50,000 [Rupees One Lakh Fifty Thousand Only] on the noticee would commensurate with the non-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 ₹1,50,000 [Rupees One Lakh Fifty Thousand Only] on Metex Marketing Pvt Ltd 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 Metex Marketing Private Limited and also to the Securities and Exchange Board of India, Mumbai.

**Place: Mumbai**

**Date: September 30, 2013**

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