BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - SD/AO/16/2010]

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 Bobby Lease Finance Limited
PAN : AABCB1442P

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 Bobby Lease Finance Limited (hereinafter referred to as the '**Noticee**') alleged to

have violated the provisions of Regulation 13(3) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the '**PIT Regulations'**) for which the adjudication proceedings has been initiated. 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 20th 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 the 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 13(3) r/w 13(5) of PIT Regulations. However, the said SCN was returned undelivered. Subsequently, the said SCN issued by the undersigned through speed post was got duly delivered. It is pertinent to note that the Noticee neither replied nor communicated to the undersigned, despite receiving the SCN.

5. Thereafter, considering the 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 appear for the personal hearing on February 22, 2010 at WRO, SEBI at Ahmedabad. The Noticee sought for an extension and requested to appear on February 24, 2010 at the SEBI WRO. The Noticee appeared before the undersigned for the personal hearing through its authorized representatives and made submissions. The submissions are discussed in the later part of the order.

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 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 PIT Regulations alleged to have violated by the Noticee and the respective penal provisions of the SEBI Act which *inter alia* reads as under :

PIT Regulations :

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies -

13. *(1) … … …*

(2) … … …

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*

(4) …. … …

(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 carefully persuaded the IR and the relevant documents available on record. It is observed from the demat statement of the Noticee that it had hold 6,98,000 shares of FTEL, constituting 9.02% of the paid up capital of

FTEL as on 19th November 2003. It is observed from the available record that the Noticee had subsequently rematted all these shares. Subsequently, the Noticee had also received the shares of FTEL in its demat account from various entities through off-market transactions and transferred the same to various other entities also through off-market. Further, the Noticee's holding also reduced below 5% and fell to as low as 0% of paid up capital of FTEL. Considering the fact that the Noticee already had 9.02% of the capital of FTEL, any fluctuation above 2% should have been reported in accordance with Reg. 13(3) read with Regulation 13(5) of PIT Regulations. The disclosure should have been made in the prescribed format as per in **Form C** to FTEL, as prescribed in PIT Regulations under Regulation 13(3). However, the Noticee allegedly failed to make the proper disclosure about such change in its shareholding pattern as per the regulatory requirement.

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.

10. However, the Noticee had filed a written submission at the time of personal hearing only. I have carefully examined the submission of the Noticee and it is observed that the Noticee has infact submitted that it had sold its entire holding through off-market transfer. Further, during the hearing proceeding also the Noticee submitted that it had intimated about the transfer shares to FTEL. However, the Noticee expressed its inability to provide the details regarding its disclosure made to FTEL, for which it had sought time to furnish the documentary evidence regarding its compliance to the regulatory requirement. Later on the Noticee had submitted an acknowledged copy of a letter dated January 5, 2004 addressed to FTEL indicating the transfer of equity shares of FTEL.

11. It is observed from the available record that, the letter was the document through which the Noticee claim to have informed regarding its change in shareholding in FTEL, which was utterly not in Form C. Thus it is amply clear that the Noticee has failed to make the required disclosure under the prescribed format of Form C as provided in the PIT Regulations. The letter dated January 5, 2004 addressed to FTEL only indicates that the Noticee had sold all its shareholding by off-market transfer which was effected through signing of blank transfer deeds for an undisclosed consideration. The said letter can not be accepted as the compliance of regulatory requirement, as specified under PIT Regulations, by the Noticee. Since as discussed on para 7, the mandate of the Noticee is to file the disclosure in proper format of Form C as per Regulation 13(3) r/w 13(5) of PIT Regulations. The Format of Form C discussed above are inter alia as under :

FORM C

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992

[Regulation 13(3) and (6)]

Regulation 13(3)—Details of change in shareholding in respect of persons holding more than 5% shares in a listed company

Name & address of share-holders	*Share-holding prior to acquisition/ sale*	*No. & % of shares/ voting rights acquired/ sold*	*Receipt of allotment advice/ acquisition of shares/ sale of shares specify*	*Date of intimation to company*	*Mode of acquisition on (market purchase/ public/ rights/ preferential offer etc.)*	*No. & % of shares/ voting rights post-acquisition/ sale*	*Trading member through whom the trade was executed with SEBI Registration No. of the TM*	*Exchange on which the trade was executed*	*Buy quantity*	*Buy value*	*Sell quantity*	*Sell value*

12. Further, the copy of the letter given by the Noticee to FTEL only reflects the number of equity shares transferred, its face value and the mode of transfer which was off-market transfer through signing blank transfer deeds. No other details had been provided by the Noticee to FTEL as per requirement in Form C

13. The basic purpose of disclosure requirements is to bring about transparency in the securities market about any substantial change (more than 2%) in shareholding of the large shareholders (holding more than 5% of the share capital) in a listed company. In the present case, the Noitcee was also one of the promoters of the company FTEL and it has a greater onus of informing the public about the change in its shareholding. Instead, admittedly the Noticee conveniently dumped all of his shareholding and exited from the company without even making proper disclosures. Thus, the Noticee has clearly acted in violation of the prevailing laws and has failed to make proper disclosures in proper format to the company FTEL.

14. At this juncture, 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 the Noticee had failed to make proper disclosure regarding its shareholding pattern in a listed company for which the Noticee violated the provisions of PIT Regulations.

15**.** 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".

16. 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 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."

17. 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 proper disclosures in Form C under PIT Regulations. On the basis of available document on record, it is established that the Noticee failed to fulfill regulatory requirements as per the PIT 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, I find the the Noticee guilty of violation the provisions PIT Regulations, for which the Noticee should be penalized.

ORDER

18. 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 M/s Bobby 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 Bobby Lease Finance Limited .

19. 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.

20. 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: 11. 03. 2010 **SANDEEP DEORE.**

MUMBAI **ADJUDICATING OFFICER.**