

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/PM/AB/2020-21/8185]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:

M/s Unique Image Production Pvt. Ltd.

PAN: AAACU9294K

FACTS OF THE CASE:

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) conducted investigation into the dealing/trading in the scrip of Pine Animation Limited (formerly known as Four K Animation Limited) (hereinafter referred to as “PAL” or “the Company”), during the period from March 28, 2013 to January 30, 2015 (hereinafter be referred to as, the “**Investigation Period**”), since sharp rise in traded volume and price of the scrip of PAL was observed during the said period.
2. Based on the findings of the investigation, SEBI initiated adjudication proceedings against Unique Image Production Pvt. Ltd. (hereinafter be referred to as, the “**Noticee**”) under Section 15HA and 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”), for the alleged violation of Violation of Section 12A(a), (b) and (c) of SEBI Act and Regulations 3(a), (b), (c), (d) and 4(1) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) and Regulation 13(4A) of the SEBI (Prohibition of Insider Trading) Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed the undersigned as the Adjudicating Officer under section 15 I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and

Imposing Penalties) Rules, 1995 ("AO Rules") to inquire into and adjudge the aforesaid allegations under Section 15A(b) and 15HA of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated July 11, 2018 (hereinafter be referred to as the "**SCN**") was issued to the Noticee under Rule 4 of the AO Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under Section 15A(b) and 15HA of the SEBI Act for the allegations as detailed in the said SCN. The violations under PFUTP Regulations will be dealt separately and aren't part of this order.
5. The scrip of PAL was listed on BSE on March 25, 1994, and was subsequently suspended from trading w.e.f November 9, 1998. Before the suspension of trading the scrip was last traded at Rs.12 on August 03, 1994. The suspension of trading in the securities of the scrip was revoked w.e.f June 22, 2012, however, trading in the scrip started only on March 28, 2013. While examining the price movement and transactions in the scrip of PAL, it was observed that the Noticee which was being shown as Promoter in the disclosures by PAL to exchanges had disposed off its entire shareholding in off-market transaction. The requisite disclosures to the exchange was not made under Reg. 13(4A) r/w 13(5) of the PIT Regulations.
6. The Noticee was holding 2,80,100 shares of PAL prior to the transfer. These shares were transferred on December 28, 2012 to M/s. Mahaganpati Financial Services Pvt. Ltd.
7. In terms of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations a disclosure in Form D has to be made to the company and to the Stock Exchange by any person who is a promoter or part of promoter group of a listed company, if there is a change in holdings which exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower; and such disclosure has to be made within two working days of acquisition or sale of shares or voting rights, as the case may be.
8. The Noticee vide letter dated July 23, 2018 submitted its reply to the SCN.
9. An opportunity of personal hearing was granted to the Noticee on January 21, 2020 vide Notice of hearing dated January 7, 2020 in accordance with Rule

4(3) of the AO Rules. The hearing notice was sent by SPAD as well by email to the Noticee. However, there was no response from the side of the Noticee and no one was present on the date of hearing. Accordingly, the matter is being decided on the basis of material available on record.

10. A summary of the submissions made by the Noticee in response to the charges of Non-disclosure in SCN is as follows:

- a. It was only a shareholder of PAL, even they have been termed as promoter. They have never been on the board of PAL neither oversee the day to day operations of PAL.
- b. Since they were not in a management role they never sent any communication to the stock exchange or regulators from their side. Only the Board/management of PAL used to send these communications.
- c. At the time of handing over of physical shares, transfer forms were also handed over and the management of PAL informed them they will counter sign the forms before sending it to transfer agent and will then inform the authorities.
- d. When the physical shares were transferred, PAL was suspended and the management of PAL said that PAL would be delisted and the Noticee believed that the management of PAL would handle all the necessary disclosures.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the reply to the SCN, oral and written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

Issue No. I Whether the trading done by the Noticee during the Investigation Period were in violation of 13(4A) of the PFUTP Regulations?

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

12. It is seen from the reply of the Noticee has contended that it was merely a shareholder and not a promoter. However, it is not for the AO to decide on the issue of Noticee being promoter or not. The name of the Noticee was appearing in the list of promoters which was disclosed to the exchanges and the Noticee

should have disputed the said fact with the Company. Further, the Noticee has submitted that it was under the assumption that all disclosures will be made by the Company and no communication needs to go from its side. However, as stated earlier Reg. 13(4A) stipulates that the disclosures are to be made to the company as well as the stock exchange. The Noticee has informed the company but hasn't informed the exchange.

13. It has to be understood that all disclosures have a specific purpose and are required to be complied with. Since any significant change in the shareholding of promoters is a sensitive thing, specific disclosure is required to be made by promoters/directors. Further, in order to avoid any delay the disclosure is required to be made to the company as well as the stock exchanges.
14. It is clear from the submission of the Noticee that it didn't do any such disclosure on the stock exchange due to its ignorance and such ignorance is not acceptable. Thus, the Noticee has failed to make the requisite disclosures to the stock exchange within the timeline as stipulated under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations about transfer/disposal of 2,80,100 shares of PAL on December 28, 2012.

Issue II - If yes, whether the violation, on the part of the Noticee would attract monetary penalty under Section 15A(b) of the SEBI Act?

15. By not making the disclosures, the Noticee failed to comply with their mandatory statutory obligation. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary.*"
16. Further, in the matter of *Virendrakumar Jayantilal Patel vs. SEBI* (Appeal No. 299 of 2014 order dated October 14, 2014), Hon'ble SAT observed that "*..... obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation.*"

17. As the violation of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations is established, the Noticee is liable for monetary penalty under section 15A(b) of SEBI Act, 1992 which, at the time of violation, read as under:

"15A. Penalty for failure to furnish information, return, etc.- 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;"

18. While determining the quantum of penalty under section 15A(b), it is important to consider the factors stipulated in section 15J of SEBI Act, 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."

19. The amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantified in the material available on record. However, it is noted from the records that the Noticee had made the relevant disclosures to the Company and the Company in turn had made the disclosures to the Stock Exchange and thus, the information did come in the public domain. Further, as submitted by the Noticee, PAL was suspended from the exchange at the relevant time and hence public couldn't trade in the shares of PAL. However, these mitigating factors don't condone the fact the Noticee failed to make the disclosure to the exchanges.

ORDER

20. After taking into consideration the nature and gravity of charges established and the facts and circumstances of the case, I, in exercise of the powers

conferred upon me under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose a monetary penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on the Noticee under section 15A(b) of SEBI Act, 1992 for violation of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations.

21. 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 by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
22. The Noticee shall forward said Demand Draft to the Enforcement Department – Division of Regulatory Action– IV of SEBI. The Noticee shall provide the following details while forwarding the Demand Draft:
 - i. Name and PAN of the entity (Noticee)
 - ii. Name of the case / matter
 - iii. Purpose of Payment – Payment of penalty under AO proceedings
 - iv. Bank Name and Account Number
 - v. Transaction Number
23. 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: June 30, 2020
Place: Mumbai

Prasanta Mahapatra
Adjudicating Officer