

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. ORDER/SRP/HKS/2018-19/1109]**

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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, IN THE ADJUDICATION PROCEEDINGS INITIATED AGAINST M/S MANASVI CONSULTANCY PRIVATE LIMITED [PAN: AAGCM5766J] IN THE MATTER OF NON-DISCLOSURE IN THE SCRIP OF KOFFEE BREAK PICTURES LIMITED.

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**BACKGROUND**

1. The Securities and Exchange Board of India (*hereinafter referred to as “SEBI”*), initiated adjudication proceedings against Manasvi Consultancy Private Limited (*hereinafter referred to as “Noticee”*) for the alleged violations of Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (*hereinafter referred to as “PIT Regulations”*) and Regulation 29(1) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (*hereinafter referred to as “SAST Regulations”*) for the alleged failure to make disclosures of its shareholding in the scrip of Koffee Break Pictures Limited (*hereinafter referred to as “KBPL/Company”*) to the Company/Stock Exchanges. Shares of KBPL were listed on The Bombay Stock Exchange Limited (**BSE**) and The Ahmedabad Stock Exchange Limited (**ASE**).

**APPOINTMENT OF ADJUDICATING OFFICER**

2. Initially, Shri S. V. Krishnamohan was appointed as the Adjudicating Officer (**AO**) in the matter. Subsequently, Shri Biju. S was appointed as the AO in place of Shri S. V. Krishnamohan and thereafter the undersigned has been appointed as the

Adjudicating Officer vide Order dated July 06, 2018, issued by SEBI to inquire into and adjudge under Section 15A (b) of The SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticee.

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

3. A Show Cause Notice dated September 19, 2017 (*hereinafter referred to as "SCN"*) was issued to the Noticee in terms of Rule 4 of The SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (*hereinafter referred to as "SEBI Adjudication Rules"*) read with Section 15-I of The SEBI Act, 1992 to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15A (b) of the SEBI Act, 1992, on the Noticee for the alleged violation of Regulation 13(1) of the SEBI PIT Regulations and /or Regulation 29(1) read with Regulation 29(3) of the SEBI SAST Regulations..
4. In the aforesaid SCN it was alleged that the Noticee, had failed to make timely disclosures to KBPL/Stock Exchanges, pertaining to its acquisition of shares in the scrip of KBPL during the period from January 01, 2013 to January 14, 2013 as specified under the provisions of the SEBI PIT Regulations, 1992 and the SEBI SAST Regulations, 2011.
5. The SCN was returned undelivered. Therefore, the SCN was served on the Noticee through affixture at the last known address of the Noticee in terms of Rule 7(c) of the SEBI Adjudication Rules. However, the Noticee failed to file any reply to the SCN.
6. In the interest of natural justice, vide Hearing Notice dated May 17, 2018, the Noticee was granted an opportunity of personal hearing on June 13, 2018. The said Notice of hearing was returned undelivered.

7. Subsequent to my appointment as the Adjudicating Officer, vide Hearing Notice dated July 11, 2018, the Noticee was provided an opportunity of personal hearing to appear before me on July 18, 2018. The Notice of hearing was affixed at the last known address of the Noticee in terms of Rule 7(c) of the Adjudication Rules. However, the Noticee failed to attend the said hearing.
8. Further, vide Hearing Notice dated July 18, 2018, the Noticee was provided one more opportunity of personal hearing to appear on July 25, 2018. The Notice of hearing was affixed at the last known address of the Noticee in terms of Rule 7(c) of the Adjudication Rules. However, the Noticee again failed to attend the said hearing.
9. I note that Noticee has been provided ample opportunities of personal hearing. However, till date, the Noticee neither availed the opportunities nor filed any reply to the SCN. Therefore, I am inclined to proceed with the matter on the basis of the material available on record.

### **ISSUES FOR CONSIDERATION AND FINDINGS**

10. I have carefully perused the SCN and the documents available on record. The issues that arise for consideration in the present case are:
  - 1) **Whether the Noticee violated the provisions of Regulation 13(1) of The SEBI PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of The SEBI SAST Regulations, 2011?**
  - 2) **Whether the Noticee is liable for monetary penalty under Section 15A (b) of The SEBI Act, 1992?**
  - 3) **If yes, then what should be the quantum of monetary penalty?**

11. It is pertinent to mention here the relevant provisions of Regulation 13(1) of The SEBI PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of The SEBI SAST Regulations, 2011, allegedly violated by the Noticee:-

**PIT Regulations, 1992**

**Disclosure of interest or holding in listed companies by certain persons -  
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 2 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.”*

**SAST Regulations, 2011**

***Disclosure of acquisition and disposal.***

*“29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.”*

*...*

*“(3)The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—*

*(a) every stock exchange where the shares of the target company are listed; and*

*(b) the target company at its registered office.”*

12. I note that the allegation levelled in the SCN is that the Noticee failed to make timely disclosures of its shareholding in the scrip of Koffee Break Pictures Limited to the Company / Stock Exchanges and thereby the Noticee, violated the provisions of Regulation 13(1) of The SEBI PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of The SEBI SAST Regulations, 2011.
13. It is observed from the records available with me that the Noticee was holding 4.07% of the total number of shares i.e. 52,88,875 shares of KBPL in the quarter ended December, 2012. Further, the Noticee had traded in the scrip of KBPL in January 2013 in the following manner:

Date	Buy Qty	Sell Qty	No. of shares held	% shareholding
01/01/2013	10000	0	5298875	4.08
03/01/2013	32525	0	5331400	4.10
07/01/2013	66000	0	5397400	4.15
08/01/2013	571532	6500	5962432	4.59
09/01/2013	156277	15000	6103709	4.69
11/01/2013	63650	250	6167109	4.74
14/01/2013	984573	4000	7147682	5.50

14. It is observed from the details in the table above, that on January 14, 2013, the Noticee sold 4,000 shares and bought 9,84,573 shares of KBPL, which resulted into increase in the percentage of the shareholding of the Noticee from 4.74% (61,67,109 shares of KBPL) to 5.50% (71,47,682 shares of KBPL).
15. I find that the disclosure requirements under The PIT Regulations and The SAST Regulations are triggered when an entity's shareholding in a company crosses the threshold limit of 5% of the total paid up capital of the company. In the instant case, I find that the Noticee was holding less than 5% shares of KBPL on January 11, 2013 (i.e. 61,67,109 shares representing 4.74% of the total paid up capital of

KBPL). As can be observed from the details mentioned above, that on January 14, 2013 the shareholding of the Noticee in the scrip of KBPL crossed threshold limit of 5% as a result of the aforesaid trades (The Noticee sold 4,000 shares and bought 9,84,573 shares of KBPL on January 14, 2013). Therefore, the Noticee was required to make the disclosures to the Company within two working days of its acquisition of shares in terms of the provisions of Regulation 13 (1) of the PIT Regulations, 1992 and to the Company as well as to the Stock Exchanges where its shares were listed (namely BSE and ASE), within two working days of its acquisition of the shares, in terms of Regulation 29(1) read with Regulation 29 (3) of the SAST Regulations, 2011. However, as per the materials available on record, I find that the Noticee has failed to make these disclosures in terms of the Regulation 13 (1) of the PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29 (3) of the SAST Regulations, 2011.

16. In this context, I observe that Hon'ble Securities Appellate Tribunal (**SAT**) has consistently held that the obligation to make disclosures within the stipulated time frame is mandatory and penalty is attracted for non-compliance with the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of **Akriti Global Traders Ltd. Vs SEBI** observed that-

*“Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.”*

17. Further, Hon'ble SAT in the matter of **Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014)**, observed that *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly, investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."*
18. I note that the Noticee has not come forward to offer any reply in respect of the violations alleged in the SCN, though the Noticee has been provided sufficient opportunity to file reply to the SCN and to appear for the personal hearing in the matter. In this context, the silence on the part of the Noticee clearly indicate that it does not want to answer any inquiry in respect of alleged violations stated in the SCN. Absence of any reply from the Noticee, despite being granted sufficient opportunities to do so, strengthen the presumption against the Noticee that it has failed to make the aforesaid disclosures to the Company as well as to the Stock Exchanges as alleged in the SCN.
19. Hence, on the basis of the facts and circumstances of the case and the material available on record the conclusion that can be drawn in the matter is that on January 11, 2013 the Noticee was holding 61,67,109 shares of KBPL i.e. 4.74% of total paid up capital of KBPL. On January 14, 2013, Noticee sold 4,000 shares and purchased 9,84,573 shares of KBPL. Consequently, shareholding of the Noticee in the scrip of KBPL had increased to 71,47,682 i.e. 5.50% of total paid up capital of KBPL. The aforesaid increase in shareholding of the Noticee in the scrip of KBPL required the Noticee to make the disclosures under Regulation 13 (1) of the PIT Regulations, 1992 to the Company and under Regulation 29(1)

read with Regulation 29 (3) of the SAST Regulations, 2011 to the Company and the Stock Exchanges within two working days of the acquisition of the shares. However, the Noticee has failed to make the requisite disclosures under the aforesaid Regulations of the PIT Regulations, 1992 and the SAST Regulations, 2011. Therefore in view of the above, I hold that the Noticee has violated the provisions of Regulation 13(1) of the SEBI PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of the SEBI SAST Regulations, 2011.

20. In view of the said violations by the Noticee as established above, the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act, which provides that:-

***Penalty for failure to furnish information, return, etc.***

***“15A. If any person, who is required under this Act or any rules or regulations made there under-***

***(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), it is important to consider the factors stipulated in Section 15J of The 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*

**Explanation** – *For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”*

- 22. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the materials available on record has not quantified the profit/loss for the violations committed by the Noticee. No quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticee. Further, there is nothing on record to show that the default by the Noticee was repetitive in nature.
- 23. By not making the disclosures on time, the Noticee has failed to comply with the mandatory statutory obligation. In this context, reliance is placed upon the order of The Hon’ble Supreme Court in the matter of **Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 }** – where the Hon’ble Supreme Court of India held that *“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant.....”*

24. Further, I also observe that Hon'ble SAT in its judgment dated 04.09.2013 in the matter of ***Vitro Commodities Private Limited Vs SEBI*** had observed that "*It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other.*" In light of the above observations of Hon'ble SAT, I am of the view that the violation of the provisions of Regulation 13 (1) of the PIT Regulations and Regulation 29(1) of the SAST Regulations committed by the Noticee are not substantially different. Therefore, these violations committed by the Noticee can be considered as a single violation for the purpose of imposition of penalty on the Noticee, as violation of the first regulation would automatically trigger the violation of the second regulation.
25. Needless to say that there is no exemption from making disclosures of the kind envisaged in Regulation 13 of PIT Regulations and Regulation 29 of the SAST Regulations as in the present case. Timely disclosures to the target Company/Stock Exchanges as required under the regulations would have helped dissemination of this important information to the general public in making their investment decisions.
26. I am of the view that the details of the shareholding of the persons acquiring substantial stake and the timely disclosures thereof, are of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company. In the instant

case, the Noticee, having acquired more than 5% stake in KBPL, the timely disclosures of the same by it under the relevant provisions of the PIT Regulations and the SAST Regulations, were of significant importance from the point of view of the investors. Further, the purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the securities market.

27. On account of the same, considering the totality of the case, I am of the firm view that the Noticee has violated the provisions of Regulation 13(1) of the SEBI PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of the SEBI SAST Regulations, 2011 and hence, the Noticee shall be liable for the penalty under Section 15A (b) of The SEBI Act, 1992.

### **ORDER**

28. Taking into consideration the aforesaid facts and circumstances of the case and in exercise of the powers conferred upon me under Section 15-I of The SEBI Act, 1992, read with Rule 5 of the SEBI Adjudication Rules, 1995, I, hereby impose a penalty of Rs.1,00,000/- (Rupees One Lakh Only) on the Noticee viz. M/s Manasvi Consultancy Private Limited in terms of Section 15A (b) of the SEBI Act, 1992, for the violation of the provisions of Regulation 13(1) of the SEBI PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of the SEBI SAST Regulations, 2011 for its failure to disclose its shareholding in the scrip of Koffee Break Pictures Limited to the Company/Stock Exchanges.
29. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch,

RTGS Code SBIN0004380 within 45 days of receipt of this Order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief (Enforcement Department-DRA-I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payment is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

30. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

**Date : August 06, 2018**  
**Place : Mumbai**

**Satya Ranjan Prasad**  
**Adjudicating Officer**