National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/62688	Date: June 28,2024
Circular Ref. No: 343/2024	

To All NSE Members,

Sub: **SEBI Order in the matter of Mr. S Sureshkumar, Kerela Housing Finance Ltd.**

This has reference to NSE circular no. NSE/INVG/30397 dated July 31, 2015 in reference to SEBI order no. WTM/PS/27/CFD/SRO-KLO/JULY/2015 dated July 31, 2015 and NSE circular no. NSE/INVG/31207 dated November 23, 2015 in reference to SEBI order no. WTM/SR/SEBI–SRO/185/11/2015 dated November 20 2015 wherein SEBI had restrained Mr. S Sureshkumar (PAN: Not Provided) from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further directions.

SEBI vide its order no. WTM/KV/EFD1/EFD1_DRA6/30556 /2024-25 dated June 28, 2024 has revoked the directions issued vide the two interim orders dated July 31, 2015, and November 20, 2015 against Mr. S Sureshkumar (PAN: BATPS6018Q) with immediate effect and the above referred interim orders issued against him is disposed of qua him without any directions.

The detailed order is available on SEBI website (http://www.sebi.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page at the below mentioned link:

https://www.nseindia.com/regulations/member-sebi-debarred-entities

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in

National Stock Exchange of India

Members are advised to take note of the above and ensure compliance.

For and on behalf of
National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

ANNEXURE: SEBI Order in the matter of Mr. S Sureshkumar, Kerela Housing Finance Ltd.

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: KAMLESH C VARSHNEY, WHOLE TIME MEMBER

ORDER

In compliance with order dated November 2, 2023 of the Hon'ble Securities Appellate Tribunal

In respect of:

Sl. No.	Noticee	PAN
1	S Sureshkumar	BATPS6018Q

In the matter of Kerala Housing Finance Limited

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A. Background :

1. The present proceedings originate from an order dated November 2, 2023 passed by Securities Appellate Tribunal (hereinafter referred to as **"Hon'ble SAT/Tribunal"**) passed while disposing of an Appeal no.806 of 2023 filed by S Sureshkumar, (hereinafter referred to as the ***"Noticee"***) shown and stated to be one of the promoters of Kerala Housing Finance Limited (hereinafter referred to as **"KHFL"/"company"**) in the order dated August 10, 2017

(hereinafter referred to as **“SEBI Order”**) passed by the Securities and Exchange Board of India (hereinafter referred to as **“SEBI”**).

2. The SEBI in its order dated August 10, 2017, found that KHFL, its promoters, directors and debenture trustees had violated various provisions of Companies Act, 1956, Companies Act, 2013, SEBI (Disclosure and Investment Protection) Guidelines 2000, (hereinafter referred to as “**DIP Guidelines**”), SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, (hereinafter referred to as **“ICDR Regulations”**), SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as **“ILDS Regulations**”) and SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (hereinafter referred to as **“NCRPS Regulations**”) and had *inter alia* directed the KHFL and its promoters and directors to refund the monies alongwith interest, collected through the allotment of equity shares, debentures, preferential shares for the period from 1999 to 2016. The said SEBI order also restrained, the promoters, directors and debentures trustees of KHFL from accessing the securities market till the entire refund was not made.

3. Being aggrieved of the findings recorded and directions issued vide the SEBI order, the *Company* and some of *Noticee* directors had preferred appeal before the Hon’ble SAT, which was latter on disposed of as ‘withdrawn’ vide orders dated May 20, 2019 and August 7, 2020. Consequently, the findings observed and directions issued in the SEBI order attained finality. Since, no refund was initiated by the *Company* and its directors/promoters, recovery proceeding was initiated. It is at this stage, the present *Noticee* had assailed the findings and directions of SEBI Order on the ground that he was never served with the show cause notice at the initial stage of proceeding that culminated in the passing of the SEBI Order. The Hon’ble Tribunal having heard the party and on perusal of records allowed the appeal of the *Noticee* and vide order dated November 2, 2023 observed that the principles of natural justice were not satisfied while dealing with the violation established against the *Noticee* in the SEBI order of August 10, 2017. The relevant extract of the SAT order is produced hereunder:

Para 8: ……, we find that the impugned order cannot be sustained on account of gross violation of the principles of natural justice as the appellant was never served with the show cause notice. The impugned order was passed without giving an opportunity of hearing.

Para 9: For the reasons stated aforesaid, we give a benefit of doubt to the appellant. The impugned order is quashed in so far as it relates to the appellant upon payment of cost of Rs.10,000/- which the appellant will deposit it before the Registrar of this Tribunal within three weeks from today and proof of such deposit shall be produced before the WTM. In this regard, we direct the appellant to appear before the WTM on November 20, 2023 on which date the appellant would be served with the show cause notice and the matter will proceed from there onwards in accordance with law. The application is allowed. The misc. applications are disposed of accordingly.

B. Findings and Direction in the Interim Orders

4. It is observed that in the matter of KHFL, two *interim* orders cum show cause notices collectively referred to as (**"interim orders"**) dated July 31, 2015 (hereinafter referred to as **"first interim order"**); November 20, 2015 (hereinafter to as **"second interim order"**) were passed against the company, its promoters, its directors and its debenture trustees. The *Noticee* in the instant matter, is stated as a promoter of KHFL in both the *interim* orders.

5. KHFL, incorporated on March 5, 1992, is a housing finance company and obtained a certificate of registration issued by the National Housing Bank without permission to accept public deposits issued under section 29A of the National Housing Bank Act, 1987. The company's registered office is at IInd Floor, Africa Plaza, Pulimood Junction, Thiruvananthapuram – 695001.

6. The first *interim* order noted that KHFL had allotted equity shares to more than 50 persons in a single allotment on 12 occasions since its incorporation, out of which 8 instances were post December 13, 2000 *(i.e., date of notification of amendment to section 67 (3) of the Companies Act)*. On certain dates, KHFL made allotments to less than 49 persons and it appeared that such allotments were made pursuant to a single offer and done in order to circumvent the provisions of first proviso to sub-section (3) of section 67 of the Companies Act, 1956. Further, with respect to the offer and issue of equity shares for the period from December 13, 2000 to March 31, 2014, no documents were available or made available

by the company to satisfy that, KHFL acted in compliance of the provisions sub-section (3) of section 67 of the Companies Act, 1956, to claim further that such offer and allotments were made on 'private placement'. Supporting the allegation of public offer having been made by KHFL, reference was drawn to advertisement on the website of KHFL soliciting applications for its 'Private Placement'. The first *interim* order also noted that in most of the instances, KHFL had not obtained specific approvals from its shareholders prior to the issue of shares, or where such approvals were taken, they were broad in nature and not indicative of issuance of securities being on 'private placements'. Instances were also identified where instead of special resolutions, as required under sub-section (1A) of section 81 of the Companies Act, 1956, only ordinary resolutions were passed. All of such instances indicated that the issue of securities made by KHFL on several occasions were neither in order nor in compliance with the relevant provisions of law.

7. Consequently, the first *interim* order, prima facie found KHFL to have contravened the provisions of sub-sections (1) and (3) of section 56, section 60 and section 73 of the Companies Act, 1956 ; section 26; sub-section (1) of section 33 and section 40 of the Companies Act, 2013, relevant provisions and clauses of ICDR Regulations and DIP Guidelines. Further, in terms of sub-regulation (za) of (1) of regulation 2 of the ICDR Regulations, the term 'promoter' includes, 'the person or persons who are instrumental in the formulation of a plan or program pursuant to which specified securities are offered'. Accordingly, it was alleged that the promoters and directors of KHFL are responsible in the offer and issue of equity shares done allegedly in contravention of the applicable law. As an *interim* measure KHFL, its directors and promoters were directed inter alia not to deal in the securities market or access the capital market and were also asked to show cause why inter alia the direction to jointly and severally to refund the money collected through the issue of equity shares along with interest, should not be passed against them.

8. The second *interim* order found that KHFL had allotted six series of Secured Redeemable NCDs ("Offer of NCDs") from the year 1999 to 2014 labelled as 'A to F' to 23,538 allottees and mobilized funds to the tune of INR 157.88 Crores. The order also took

note of preference shares issued to the tune of INR18.73 crores to 1,071 allottees by KHFL during the Financial Years 2014–15 and 2015–16.

9. The second *interim* order took the *prima facie* view that the allotment of NCDs and preference shares were in the nature of deemed public offer of NCDs and preference shares were issued in contravention of the first proviso to sub-section (3) of section 67 of the Companies Act, 1956. The order also took the view that the benefit of the second proviso to sub-section (3) of section 67 of the Companies Act, 1956, was not open to KHFL. As had been discussed in the first interim order, the second *interim* order also placed reliance on advertisement placed on KHFL's website indicating that KHFL had been soliciting subscriptions to its securities from the general public and not specific to certain group of limited investors pre-decided at the time of passing of resolution authorising KHFL for mobilisation of funds through such issuance of securities.

10. Consequently, the second *interim* order also found KHFL to have contravened the provisions of sub-section (1) and (3) of section 56, Section 60 read with sub-section 2 of section 36 and section 73 of the Companies Act, 1956; the DIP Guidelines read with ICDR Regulations and ILDS Regulations. Accordingly, as an *interim* measure, KHFL, its directors, promoters and unregistered debenture trustees were *inter alia*, restrained from mobilizing funds through issue of securities, prohibited from disposing off assets and dealing in securities. Further, *inter alia*, they were directed to show cause as to why, the direction to refrain from accessing the securities market and jointly and severally to refund the money collected through the issue of debentures along with interest, should not be passed against them.

11. Both the *interim* orders culminated into the passing of final order dated August 10, 2017, which *inter alia*, found KHFL to have contravened the various provisions of Companies Act, 1956, Companies Act, 2013, SEBI (DIP) Guidelines, SEBI (ICDR) Regulations, SEBI (ILDS) Regulations and SEBI (NCRPS) Regulations, in connection with the public offer and allotment of shares and debentures by KHFL.

12. KHFL along with its directors, promoters and unregistered debenture trustees, were inter alia directed to jointly and severally refund the money collected through the offer and allotment of equity shares, debentures and preference shares of KHFL and till the refund; (i) were

restrained from accessing the securities market; (ii) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly and (iii) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public. In the event of failure to comply with the directions of refund, SEBI shall initiate recovery proceedings in accordance with the provisions of the SEBI Act 1992.

13. Since the Noticees referred to in the final order failed to refund the money collected through offer and allotment of equity shares, debentures and preference shares in KHFL, recovery proceedings under Section 28(A) of the SEBI Act, 1992 was initiated against the Noticees. A recovery certificate dated February 10, 2021, for recovery of a sum of INR 3,11,22,33,159 (which includes INR 2,03,94,34,000 (amount mobilised from public) plus INR 1,07,27,98,159 (interest @ 15% per annum from August 10, 2017 to February 10, 2021) plus INR 1000/- (recovery cost)) was issued and the same was also served to the *Noticee* in the instant matter. Thereafter, in March 2021, the *Noticee* pursuant to an RTI application filed with SEBI, was provided with links to access the first and second *interim* orders and the final order. SEBI issued the second demand notice dated November 7, 2022, which was duly served to the *Noticee*. Subsequently, pursuant to an appeal filed by the *Noticee*, the Hon'ble SAT vide its order dated November 2, 2023, observed that the principles of natural justice were not satisfied while dealing with the violations established against the *Noticee* in the SEBI order of August 10, 2017 and hence allowed the appeal and passed directions as referred at para 3.

C. <u>Reply and Hearing</u>

14. In compliance to the directions of the Hon'ble SAT, the *Noticee* was served with the *interim* orders on November 20, 2023 and was advised to file reply, if any, on or before December 5, 2023. On the request of the authorized representative of the *Noticee*, inspection of documents was provided on December 14, 2023 and January 3, 2024. Post inspection, the *Noticee* was provided two weeks' time to file his submissions. *Noticee* sought for extension of time upto January 30, 2024 to file submissions. The reply was filed on January 25, 2024 and in terms of the principals of natural justice, an opportunity for hearing was granted on February 21, 2024. The authorized representatives of the *Noticee* appeared in person on

the scheduled date of hearing and made submissions in line with the *Noticee*'s reply. During the hearing proceedings, the *Noticee* was advised to provide certain documents and the same were submitted vide his reply of March 18, 2024 and further submissions on May 6, 2024. A summary of the submissions advanced through his replies dated January 25, 2024, March 18, 2024 and May 6, 2024 is as under:

14.1 The *Noticee* denies all the allegations and charges made against him in the *interim* orders.

14.2 It has been submitted that *Noticee* has no affiliation or connection with KHFL or its employees in any manner. The only individual the *Noticee* was acquainted is with Mr. B Ajithkumar, who is a distant relative (who is a promoter of KHFL and a *Noticee* in both the *interim* orders as well as in the SEBI order).

14.3 The *Noticee* was never a director, shareholder, promoter, authorized signatory or an employee of KHFL nor participated in any of the meetings of KHFL. The *Noticee* has not received a single penny from the account of KHFL at any point of time and the same is evident from the records available with the SEBI.

14.4 The *Noticee* has attached his Income Tax records and bank statements to show his financial status evidencing no transactions with KHFL or its directors/ shareholders / promoters or its employees.

14.5 The *Noticee*s' submits that signature on the Memorandum of Association (hereinafter referred to as 'MOA') exhibit significant discrepancies and variations when compared to his signature on other documents. Even the signatures on the MOA differ from the Articles of Association (hereinafter referred to as 'AOA'). His signature on MOA and AOA appeared to be forged by the promoters and directors of the company. Such discrepancies in signatures raise concerns regarding the authenticity and validity of the documents in question.

14.6 To augment his submission, *Noticee* has furnished a copy of the complaint filed with the police on March 16, 2021 stating that his signatures in the MOA was forged. Since, his complaint was not enquired into, *Noticee* had later on filed a complaint dated September 14, 2021 with the Commissioner of Police, Thiruvanthapuram, to register the FIR or convert the complaint of March 2021 into an FIR.

14.7 The *Noticee* states that the reliance on the documents and correspondences showing his association based on allegedly forged documents can't be sufficient to arrive at conclusion holding him guilty of alleged violations. SEBI's reliance on the list of promoters as provided by KHFL to arrive at the findings that the *Noticee* was a promoter of KHFL is erroneous, baseless and unsustainable. The documents relied upon by the SEBI and provided to the *Noticee* during inspection show that the *Noticee* was not a "person in charge and responsible for the conduct of the business" under sub-section (2) of section 27 of the SEBI Act, for the alleged prima facie or otherwise contraventions committed by KHFL through the Offer and issuance of securities.

14.8 While disputing the content of letter of KHFL dated December 4, 2014 whereby his name was mentioned in the list as a promoter, *Noticee* has requested for an opportunity to cross examine the officials of KHFL to contradict and controvert the information furnished vide the afore-stated letter of KHFL.

14.9 It has been vehemently submitted that none of the documents viz; shareholding pattern, details of debentures issued, details of debenture trustees, shareholder resolutions, minutes of meetings and annual reports have the name of the *Noticee* or his signatures on the said documents. He claims that he did not attend any Board meetings of KHFL in any capacity nor is his name or signature found to be affixed in any of the minutes of the Board meetings, that shows he was not associated with KHFL in any capacity at point in time.

14.10 The *Noticee* is not associated with KHFL and did not have any knowledge regarding the debenture issues nor did he have any role or association with the inspections and reporting done by and to the National Housing Bank.

14.11 In terms of sub-regulation (za) of (1) of regulation 2 of the ICDR Regulations 2009, the term promoter includes "the person or persons who are instrumental in the formulation of a plan or program pursuant to which specified securities are offered". The records do not contain any documents to show that *Noticee* was involved in the activities of KHFL nor was he instrumental in the formulation of a plan or program pursuant to which specified securities were offered. In the absence of which, it may not be lawfully tenable to hold *Noticee* as a “promoter” as per sub regulation (za) of (1) of regulation 2 of the ICDR Regulations 2009.

14.12 It was also submitted that he was not in India at the time of issue of SCN and also for most of the time from the incorporation of the company till the issue of ad-*interim* ex-parte orders. He was working in Dubai during majority of the examination period i.e. from March 1992 to March 2014. The *Noticee* was holding residency in United Arab Emriates during the period from April 2012 to April 2018.

14.13 The *Noticee* moved out of his ancestral home in Pattom in and around 2005, since then, was staying in rented accommodations, and did not have a permanent residence in his own name. In and around 2015, after his return from UAE he settled in Vanchiyoor, Trivandrum and applied for a change in address in his official documents.

14.14 The *Noticee* has relied on order of the Hon’ble SAT dated March 12, 2019 passed in the matter of North End Foods Marketing Pvt. Ltd. & Anr. Vs SEBI, Appeal No. 80 of 2019 and Hon’ble Supreme Court order dated May 1, 1984 in the matter of Liberty Oil Mills & Ors. Vs Union of India and Ors, in support of his contention that there was no impending need or cogent evidence to pass such harsh directions against the *Noticee* without sufficient adjudication, investigation and justification.

14.15 The *Noticee* has further placed reliance on the order of the Hon’ble SAT dated October 18, 2019 passed in the matter of Mahavirsingh N Chauhan vs SEBI. In support of his argument that the direction to disgorge the amount jointly and severally is wholly illegal and contrary to the provisions of SEBI Act. Under section 11B of SEBI Act, the liability to disgorge an amount is individual and therefore no direction could be issued to disgorge the amount jointly and severally.

D. <u>Consideration of Issues and Findings</u>

15. I have considered both the *interim* orders passed in the said matter, replies of the *Noticee* and other materials available on record. In consideration of the directions passed by Hon’ble SAT, the matter arise for consideration is limited to the following examination with respect to the *Noticee* :

Issue: Whether there is material sufficient to hold *Noticee* a promoter of KHFL (as alleged in the *interim* orders), liable to refund the amount raised by KHFL through the offer and issuance of securities, in violations of various provisions of laws as stated in both the *interim* orders?

16. Before examining the issue of whether the *Noticee* is a promoter of KHFL, I would like to quote the definition of 'promoter' as stated in the Companies Act and ICDR Regulations, 2018:

In terms of sub-regulation(oo) of regulation (2) of ICDR Regulations "promoter*"- (i) "who has been named as such in a draft offer document or offer document or is identified by the issuer in the annual return referred to in section 92 of the Companies Act, 2013*;" *or (ii) who has control over the affairs of the issuer, directly or indirectly whether as a shareholder, director or otherwise; or (iii) in accordance with whose advice, directions or instructions the board of directors of the issuer is accustomed to act.*

<u>Further, sub-sections (b) and (e) of sub-section (1) of section 92 of the Companies Act, 2013 states as follows:</u>

(1) Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

(b) its shares, debentures and other securities and shareholding pattern

(e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year.

16.1. KHFL has filed its first MOA and AOA with ROC, on March 5, 1992, which as per ROC records, is also the date of incorporation of KHFL. A subsequent MOA and AOA was filed by KHFL with ROC of which, the date of filing is not legible. From the records placed before me, it is noted that both these documents state the name, address, number of equity shares issued to each subscriber along with their signatures. From these records, I note that the *Noticee,* was shown to be allotted 1000 shares of KHFL on March 5, 1992 and as per details of shareholders filed with ROC, the *Noticee* continued to be holding the same at least till September 30, 2014. However as noted above, the *Noticee* has disputed the above disclosure of showing him as a promoter of KHFL. As per records of ROC and available on the record of the SEBI, the list of subscribers under the MOAs; AOAs of KHFL is as given below:

Table -1

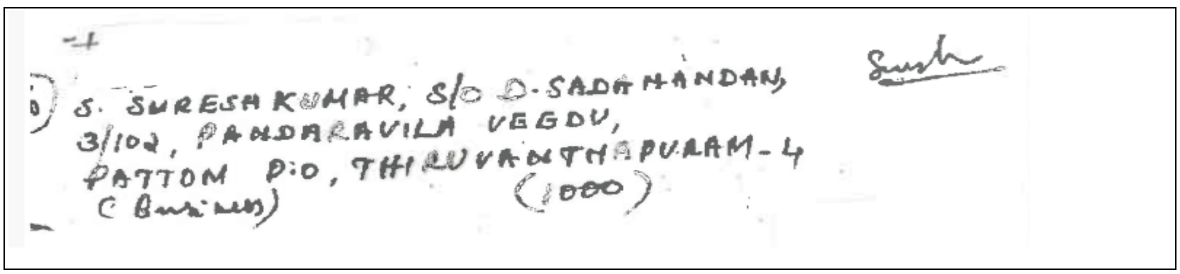
Sr.No.	Name of the Subscriber	Address	Occupation	No. of shares
1	B Ajithkumar	13/156, Maruthummooduveedu Panthalacode P.O. Thiruvanthapuram 18	Business	5000
2	B Manmathan	91/VIII Binu Bhavan Mavelikara -1	Advocate	1000
3	Shajan P G	477A/ IX, Perumpallil Nest Kurathikadu, Mavelikara -7	Business	1000
4	G Sureshkumar	130/10 Gourisadanam Varenickal, Mavelikara -7	Business	1000
5	R Sukumaran	453/XII S W Nilayam Pallickal (E) Mavelikara -7,	Business	1000
6	S Sureshkumar	3/102, Pandaravilla Veedu Pattom P.O. Thiruvanthapuram-4	Business	1000
7	G Unnikrishnan Nair	VI/25, Mullassearilveedu Chathannapuzha, Choorakodu P.O. Adoor Pathanamthitta	Business	5000

16.2. In addition, to the above, the company vide its letter dated December 4, 2014 has provided the names and addresses of the entities given at table-1 above, being the promoters of KHFL. These promoters were Noticees in both the *interim* orders and final order dated August 10, 2017. The reply furnished by the company vide its above-mentioned letter also includes the name of the *Noticee* in the instant matter. The above mentioned letter of the company, MOA and AOA are the only documents available on record to allege the *Noticee* as a promoter of the KHFL.

16.3. I note that the *Noticee* is his reply has vehemently submitted that his signatures on the MOAs and AOAs of KHFL are forged and fabricated and these documents do not bear his genuine or real signature. In this context, it is observed, that KHFL had filed two sets of MOA and AOA with ROC. One set of documents were filed in March 1992 and another set was filed at a later date *(from the records, the date of filing of second set is not legible*). The *Noticee* in support of his innocence submitted that even the signature on the two sets of MOAs and AOAs are distinct and not same. On perusal of the signatures of the *Noticee* on the two sets of MOAs and AOAs filed by KHFL with ROC, I find that the signatures on the first set of MOA and AOA filed in March 1992, seems to be different from the signature shown against the name of the *Noticee* on the MOA and AOA filed by KHFL at a later date. Scan images of the aforementioned two sets of MOAs and AOAs bearing name, address, number of shares subscribed, occupation and signature of the Noticee are produced hereunder.

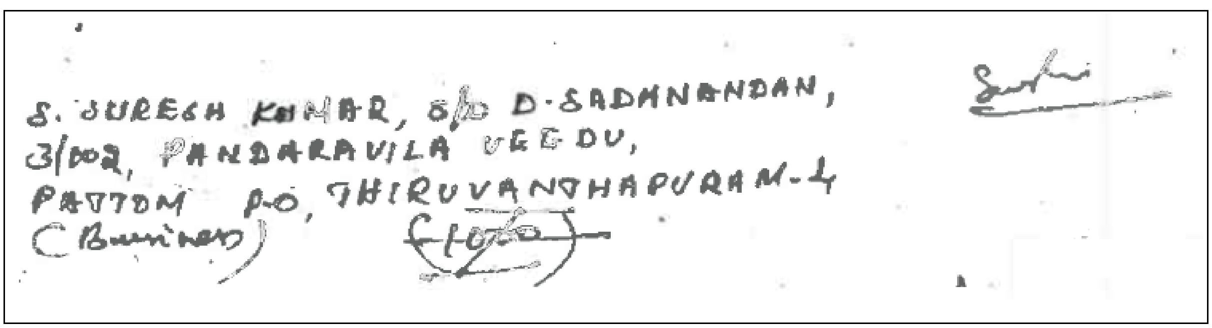
<u>Details on the MOA & AOA of KHFL filed in March 1992</u>

<u>MOA</u>



S. SURESH KUMAR, S/O D. SADANANDAN,
3/102, PANDARAVILA VEEDU,
PATTOM P.O, THIRUVANANTHAPURAM-4
(Business) (1000)

<u>AOA</u>



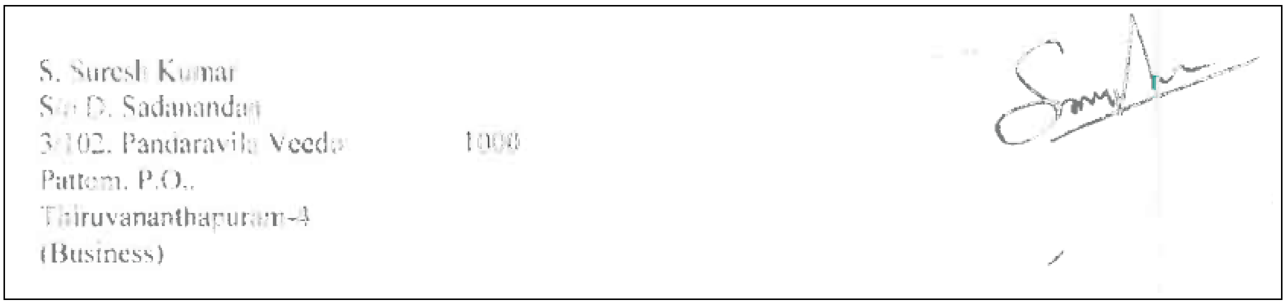
S. SURESH KUMAR, S/O D. SADANANDAN,
3/102, PANDARAVILA VEEDU,
PATTOM P.O, THIRUVANANTHAPURAM-4
(Business)

<u>Details on the MOA & AOA of KHFL filed subsequently</u>

<u>MOA</u>

S. Suresh Kumar
S/o D. Sadanandan
3/102. Pandaravila Veedu 1000
Pattom. P.O.,
Thiruvananthapuram-4
(Business)

AOA

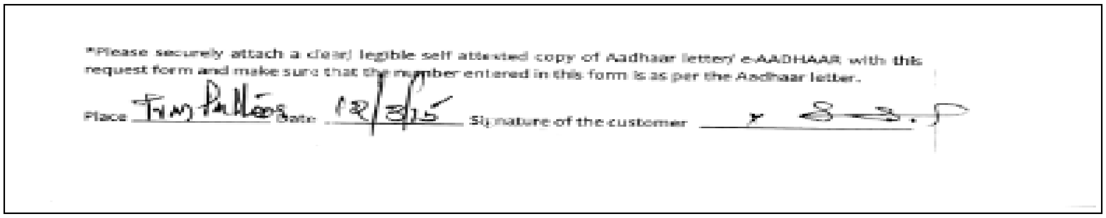


S. Suresh Kumar
S/o D. Sadanandan
3/102. Pandaravila Veedu 1000
Pattom. P.O.,
Thiruvananthapuram-4
(Business)

16.4. In further support to the above, *Noticee* submits that the signature on the above documents exhibit significant discrepancies when compared to his actual signature. In order to dispute him being shown as a promoter of KHFL based on signature, the *Noticee* has produced his Passport and PAN to indicate and demonstrate that his signature is quite distinct and different from the one appearing on MOAs and AOAs.

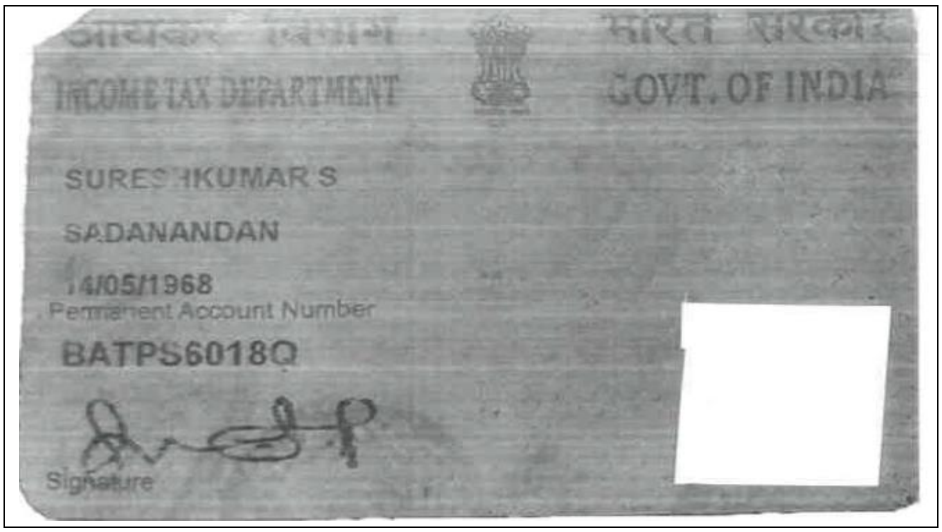
16.5. I have also perused the signature of the *Noticee* on the Account Opening Form submitted by the *Noticee* with the Federal Bank at the time of account opening on May 11, 2004. In my view and on plain perusal of the signatures of the *Noticee* on the two sets of MOA and AOA seems to be different from each other. It is also observed that, the signature available on the MOAs and AOAs when seen and compared, do not seem to match with the signature on the bank account opening form and on the PAN and passport of the *Noticee*. Scan image of the signature of the Noticee as appeared on the Account Opening Form, PAN and Passport is produced hereunder:

Signature on the Account Opening Form


*Please securely attach a clear/ legible self attested copy of Aadhaar letter/ e-AADHAAR with this request form and make sure that the number entered in this form is as per the Aadhaar letter.

Place ______ Date 12/3/15 Signature of the customer ______

Signature on PAN


आयकर विभाग भारत सरकार

INCOME TAX DEPARTMENT GOVT. OF INDIA

SURESHKUMAR S

SADANANDAN

14/05/1968

Permanent Account Number

BATPS6018Q

Signature

Signature on Passport


भारत गणराज्य REPUBLIC OF INDIA

P IND

SADANANDAN

SURESH KUMAR

INDIAN M

PATTOM, KERALA

TRIVANDRUM

13/03/2012 12/03/2022

P<INDSADANANDAN<<SURESH<KUMAR<<<<<<<<<<<<<<<<

K3745517<2IND6805148M2203126<<<<<<<<<<<<<<<<8

16.6. In this respect, without going into the merit of the matter, it is observed that forgery or fabrication of signature can't be tested and scrutinized under the present proceeding. Notwithstanding the same, on looking at the signature, that is, the one on the MOAs/AOAs with the signature on the PAN; Passport and Account Opening Form of the *Noticee*, it can be said the two are not the same and apparently appears to be distinct.

16.7. In this context, a reference is drawn to the order of Hon'ble SAT dated October 9, 2023 passed in the matter of *Sanjeet Kumar Sharma vs SEBI (Appeal No. 596 of 2022).* In the said order, the appellant had submitted before Hon'ble SAT that he was never appointed as a director in said company and his digital signatures were fraudulently placed for which he had even filed a police complaint. The Hon'ble SAT, while accepting the submission of the appellant in the said order held as follows:

> "*10. In view of the aforesaid evidence which has been filed by the appellant, we are of the opinion, that entries made in the MCA portal showing the appellant as a Director cannot be taken as the gospel truth when such entries are disputed and, therefore, SEBI is required to consider other additional evidence to support their case that the appellant was a Director. Additional evidence could be in the form of Board Resolutions showing his presence, appointment letter, acceptance letter and such other documentary evidence which can be obtained from the Company itself*."

16.8. In the instant matter also, I note that *Noticee* has seriously disputed his signature of MOAs and AOAs and apart from the above, there is no independently verifiable document that which shows that he was associated with KHFL as a promoter. Several attempts were made by the SEBI to find out from MCA/ROC to see if there is any evidences which can support to show that the *Noticee* was associated with the company as a promoter or otherwise. However, no such evidence has been brought on record. In the absence of which and considering the findings of the Hon'ble SAT in the matter of *Sanjeet Kumar Sharma vs SEBI* (supra), it is viewed that the *Noticee* also deserves to be treated similarly.

16.9. In this respect, it is also observed from the available records that the first communication which the *Noticee* had acknowledged was the recovery certificate dated February 10, 2021, which was issued by SEBI pursuant to failure by KHFL, its promoters and directors to refund the money collected through offer and allotment of equity shares, debentures and preference shares in KHFL. The *Noticee* thereafter sought details through application filed under Right to Information with SEBI in March 2021 and was provided with links to the both the *interim* orders and the final order passed in the said matter. The *Noticee,* then filed a police complaint in March 2021 that his signature was being forged by the KHFL's promoters and directors. In the police complaint, the *Noticee* has stated that he came to know about the forgery when he received the recovery notice. The *Noticee* has also provided documents in support of his contention with respect to filing of complaint in March 2021 and subsequent letter dated September 14, 2021, to the Commissioner of Police Thiruvananthapuram with respect to non-registration of the FIR. From the above, it appears that *Noticee* has acted promptly upon coming to know about forgery of his signature and him being shown as a promoter of KHFL.

16.10. Further, I also take note of the bank statements filed by the *Noticee* in support of his submission that he did not have any association with the company. From the perusal of the bank statement, it is observed that same do not contain any fund transfers having transacted between the *Noticee* and KHFL. Also, there is no document placed before me which indicates that *Noticee* had any fund transactions with KHFL or with its directors / promoters whose names appear on the *interim* orders passed by SEBI in this matter.

16.11. I also find merit in the submission that in terms of sub-regulation (za) of sub-regulation (1) of regulation 2 of the ICDR Regulations 2009, the term promoter includes "the person or persons who are instrumental in the formulation of a plan or program pursuant to which specified securities are offered". However, the records before me do not show involvement of *Noticee* in the activities of KHFL nor there is evidence to show that he was he instrumental in the formulation of a plan or program pursuant to which specified securities are offered. In the absence of any evidence, it is difficult to hold *Noticee* as a promoter based on disputed documents and therefore, it becomes difficult to hold him liable as a promoter of KHFL and fasten with liability of making refund of money raised through offer and issuance of securities. The *Noticee* also submits that there is no evidence to hold him a "person in charge and responsible to the company for the conduct of the business" so as to be held liable under sub-section (2) of section 27 of the SEBI Act.

16.12. Based on the records placed before me in the form of copies of Board resolutions, shareholder's resolutions, Board meeting minutes, with respect to the issue of shares and debentures by KHFL, I find that there are no documents which prove that the *Noticee* has been involved for the issuance shares and debentures by KHFL during the examination period.

16.13. Based on the above and relying on the ruling of Hon'ble SAT (referred at para 16.7), alongwith facts that the very documents that showed him as a promoter of KHFL have been disputed by the *Noticee*, it is not legally tenable to make out a case against him on the basis of limited documents available on record. Therefore, I am of the opinion that when the very documents which have been filed by KHFL in ROC is under dispute, it becomes necessary to have additional evidence in order to prove otherwise. Further, the matter with respect to the allegation of the *Noticee* on his signatures being forged are yet to attain finality and hence the same is sub-judice, therefore, can't be relied upon at this stage to come to a definite findings adverse to the *Noticee*.

16.14. Apart from the above, it is also noticed that *Noticee* in support of his submission that there was no impending need to pass such harsh directions without sufficient adjudication, investigation or justification, has relied on the order of Hon'ble SAT dated March 12, 2019 passed in the matter of *North End Foods Marketing Pvt. Ltd. & Anr. Vs SEBI*, Appeal No. 80 of 2019 and further a decision of the Hon'ble Supreme Court dated May 1, 1984 in the matter of *Liberty Oil Mills & Ors. Vs Union of India and Ors*.

16.15. On perusal of these orders, I note that, Hon'ble SAT in the matter of North End Foods Marketing Pvt. Ltd., dated March 12, 2019, opined that *"…the basis of urgency was purely on account of presumption and was not based on any piece of evidence." Hon'ble SAT further stated that, SEBI is empowered to pass an ex-parte interim order only in extreme urgent cases and that such power should be exercised sparingly"*. Further, Hon'ble Supreme Court order dated May 1, 1984 in the matter of *Liberty Oil Mills & Ors. Vs Union of India and Ors*., Hon'ble Supreme Court has emphasized that action in the form of ex-parte order must necessarily be animated by a sense of urgency.

16.16. Having gone through the above referred and relied upon decisions, I am of the view that reliance is misplaced. In the instant matter, it was found that KHFL while raising money through issuance of securities was in contravention of various provisions of law over the period. In this respect, information was sought from KHFL and after due deliberation of the same, it was found expedient that in order to protect the interest of investors and further to prevent KHFL from acting detrimental to the interest of investors of securities market, an urgent order was required to be passed.

16.17. Similarly, the reliance of *Noticee* on the order the Hon'ble SAT dated October 18, 2019 in the matter of *Mahavirsingh N Chauhan vs SEBI*, with respect to the applicability of direction to disgorge the amount jointly and severally is also found to be factually distinguishable and not apt to be relied upon. On perusal of the order of the Hon'ble SAT, it is observed that the matter pertains to buying and selling of shares of SMS Techsoft (India) Ltd. In the referred matter, it was found that a group of entities had adopted a fraudulent device and artifice to defraud the genuine shareholders pursuant to the preferential allotment thereby earning illegal profits. In the said order, Hon'ble SAT opined that a person can be directed to disgorge amount equivalent to the wrongful gain made by him. However, in the same order Hon'ble SAT agreed to disgorgement being jointly and severally for one entity who was found to be acting in concert with other entities in the said matter. Thus the reliance of the *Noticee* to the said order, is found to be incorrect and faulty in the instant matter. The matter addressed in this order pertains to KHFL, its directors, promoters and debenture trustees, having made a public offer failed to comply with the various provisions of Companies Act and SEBI Guidelines/Regulations. Therefore, the reliance to the Hon'ble SAT order in the matter *of Mahavirsingh N Chauhan vs SEBI*, stands no merit in the instant matter.

E. Conclusion

17. Taking into consideration the *Noticee*'s submission on his non association with KHFL and in view of my findings at paragraph 16 above, I am of the opinion that the documents which have been relied upon to showcase the *Noticee* as a promoter of KHFL itself is being challenged, fall short in bringing home the allegations. In light of the above, it becomes necessary for me to have additional evidence to prove allegations against the *Noticee*. Presently, the only documents placed before me is the MOAs and AOAs (referred at para 16.1) and the details of shareholding which are filed by KHFL with ROC and the reliability on the same is questionable for the reasons recorded in preceding paras. In the absence of any additional document placed before me, I am presently inclined to give benefit to the *Noticee* and exonerate him from the contraventions alleged in the *interim* orders. However, if any further evidence is made available at any future date, then the same will be taken into consideration and the matter will be proceeded accordingly.

F. Order

18. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of section 19 of the Securities and Exchange Board of India Act, 1992 read with section 11B of the SEBI Act, hereby revoke the directions issued vide the two *interim* orders dated July 31, 2015 and November 20, 2015 against Mr. S Sureshkumar (PAN: BATPS6018Q) with immediate effect and the above referred *interim* orders issued against him is disposed of *qua* him without any directions.

19. The above findings have been arrived at based on examination of limited materials available on record and the same shall not preclude SEBI for initiating an action upon receipt of any evidence in future that show his complicity/involvement in the offer and issuance of securities by KHFL during the relevant period.

20. The above shall also not preclude investors from pursuing separate civil remedies against KHFL, its promoter's directors including the *Noticee* (Mr. S. Sureshkumar).

21. Copy of this order shall be sent to the *Noticee*.

22. Copy of this order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.

Sd/-

DATE : JUNE 28, 2024 **KAMLESH C. VARSHNEY**
PLACE : MUMBAI **WHOLE TIME MEMBER**
SECURITIES AND EXCHANGE BOARD OF INDIA