KIRLOSKAR INDUSTRIES LIMITED
A Kirloskar Group Company

Enriching Lives

21 October 2020

BSE Limited
Corporate Relationship Department
1st Floor, P.J. Towers,
Dalal Street, Fort,
Mumbai 400001.

BSE Scrip Code: 500243

The Manager
Listing Department
National Stock Exchange of India Limited
Exchange Plaza, C-1, Block-G,
Bandra-Kurla Complex, Bandra (E),
Mumbai 400051.
NSE Scrip Code: KIRLOSIND

Subject: Intimation under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR).

Pursuant to Regulation 30 of the SEBI LODR, we wish to inform you that certain promoters / directors of the Company have intimated the Company on 21 October 2020 about an order dated 20 October 2020 that has been passed by SEBI (received by the said promoters / directors on 21 October 2020) pursuant to the Show-Cause Notices issued by SEBI, Investigations Department ("**Order**") against them. A copy of the said Order is enclosed for your reference.

You are requested to take the same on record.

Yours sincerely,

For Kirloskar Industries Limited

A.V.Mali

KIRLOSKAR INDUSTRIES LTD. PUNE-05

Ashwini Mali
Company Secretary and Compliance Officer

Enclosed: As above

`

WTM/MPB/IVD/ ID1/139/2020

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11, 11(4), 11B (1), 11B (2) and 11(4A) of the 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 Re: Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992; and

Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003

In respect of

SCN No. SEBI/HO/IVD/ID1/OW/P/2019/32971/1 dated December 10, 2019 – SCN -1
SSCN No. SEBI/HO/IVD/ID1/OW/P/2020/12203/1 dated July 24, 2020 – SSCN -1

Sr. No.	Noticee No in Order	Noticee No in SCN	Entities Name	PAN
1	Noticee No. 1	Noticee No. 1	Alpana R. Kirloskar	AARPK0165B
2	Noticee No. 2	Noticee No. 2	Arti Atul Kirloskar	ABEPK3630R
3	Noticee No. 3	Noticee No. 3	Jyotsna Gautam Kulkarni	ABIPK9696F
4	Noticee No. 4	Noticee No. 4	Rahul Chandrakant Kirloskar	ABIPK5774E
5	Noticee No. 5	Noticee No. 5	Atul Chandrakant Kirloskar	ABIPK5776G
6	Noticee No. 6	Noticee No. 6	Gautam Achyut Kulkarni (Since Deceased) through his Legal Representatives - (i) Jyotsna Gautam Kulkarni (ii) Nihal Gautam Kulkarni (iii) Ambar Gautam Kulkarni	Jyotsna - ABIPK9696F Nihal - AIVPK1270B Ambar - AIVPK1247L

SCN No. SEBI/HO/IVD/ID1/OW/P/2019/33133/1 dated December 11, 2019 – SCN-2
SSCN No. SEBI/HO/IVD/ID1/OW/P/2020/12210/1 dated July 24, 2020 – SSCN -2

Sr. No.	Noticee No in order	Noticee No in SCN	Entities Name	PAN
1	Noticee No. 7	Noticee No. 1	Nihal Gautam Kulkarni	AIVPK1270B
2	Noticee No. 8	Noticee No. 2	A R Sathe	ABLPS3829D

`

SCN No. SEBI/HO/IVD/ID1/OW/P/2019/33129/1 dated December 12, 2019 – SCN-3
SSCN No. SEBI/HO/IVD/ID1/OW/P/2020/12206/1 dated July 24, 2020 – SSCN -3

Sr. No.	Noticee No in order	Noticee No in SCN	Entities Name	PAN
1	Noticee No. 9	Noticee No. 1	A.N. Alawani	AAXPA8052D

In the matter of Kirloskar Brothers Limited

BACKGROUND

1. Kirloskar Brothers Limited (hereinafter referred to as **'KBL'/ 'Company'**) was incorporated on January 15, 1920 and registered with Registrar of Companies, Pune. KBL is listed on Bombay Stock Exchange Limited (hereinafter referred to as **'BSE'**) and National Stock Exchange Limited (hereinafter referred to as **'NSE'**).

2. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) received various complaints alleging insider trading and bad corporate governance practices in the context of KBL. Pursuant to the receipt of complaints, SEBI conducted investigation during the period from March 1, 2010 to April 30, 2011 (hereinafter referred to as **"investigation period"**) in the matter relating to dealings in the scrip of KBL to ascertain possible violation of the provisions of SEBI Act, 1992, SEBI (Prohibition Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT Regulations, 1992"**) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**).

3. Investigation revealed that during the investigation period, (1) promoters and directors of KBL had traded in the scrip of KBL while in possession of unpublished price sensitive information (hereinafter referred to as **"UPSI"**) and got wrongfully benefitted by avoidance of losses; (2) promoters and directors of KBL had submitted incorrect undertakings/ declarations to KBL; and (3) promoters and directors of Kirloskar Industries Limited (hereinafter referred to as **"KIL"**) committed fraud on KIL and public shareholders of KIL.

`

SHOW CAUSE NOTICE

4. Thereafter, a Common Show Cause Notice dated December 10, 2019 (hereinafter referred to as **'SCN-1'**) was issued to Alpana R. Kirloskar (hereinafter referred to as **"Noticee No. 1" / "Alpana"**), Arti Atul Kirloskar (hereinafter referred to as **"Noticee No. 2" / "Arti"**), Jyotsna Gautam Kulkarni (hereinafter referred to as **"Noticee No. 3" / "Jyotsna"**), Rahul Chandrakant Kirloskar (hereinafter referred to as **"Noticee No. 4" / "Rahul"**), Atul Chandrakant Kirloskar (hereinafter referred to as **"Noticee No. 5" / "Atul"**), Gautam Achyut Kulkarni (hereinafter referred to as **"Noticee No. 6" / "Gautam"**) (since deceased) through Legal Representatives namely, Jyotsna Gautam Kulkarni, Nihal Gautam Kulkarni (hereinafter referred to as **"Nihal"**) and Ambar Gautam Kulkarni (hereinafter referred to as **"Ambar"**) [Jyotsna, Nihal and Ambar together referred to as **"LRs of Noticee No.6"**] and a common Supplementary Show Cause Notice dated July 24, 2020 (hereinafter referred to as **'SSCN-1'**)was issued to Noticee No. 1 to 5 in the matter of KBL to show cause as to why:

   4.1. appropriate penalty and directions including disgorgement of the loss avoided by Noticee No. 1 to 5 while trading in the shares of KBL, be not issued against Noticee No. 1 to 5 under sections 11(1), 11(4), 11B(1), 11B(2) read with 15G, 15HA, and 11(4A) of SEBI Act, 1992 read with Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"AO Rules"**) for the alleged violation of Section 12A(d) and (e) of SEBI Act, 1992, Regulation 3(i) read with Regulation 2(ha) of PIT Regulations, 1992 read with Regulation 12 of SEBI (Prohibition Insider Trading) Regulations, 2015 (hereinafter referred to as **"PIT Regulations, 2015"**) for trading in the shares of KBL while in possession of UPSI by Noticee No. 1 to 5 and for the alleged violation of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) PFUTP Regulations for the fraud committed on KIL and other stakeholders including public shareholders (i.e. minority shareholders) by Noticee No. 1 to 6 together with A N Alawani, A R Sathe and Nihal;

   4.2. appropriate penalty be not levied against Noticee No. 1, 3 and 4 under sections 11B(2) read with 15HB and 11(4A) of SEBI Act, 1992 read with Rule 4(1) of AO Rules for the alleged violation of Part A, of clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of SEBI PIT Regulations 1992 by Noticee No. 1, 3 and 4;

`

4.3. direction for disgorgement of the loss avoided by Late Gautam Achyut Kulkarni while trading in the shares of KBL, be not issued against Legal Representatives of Noticee No. 6 namely Jyotsna, Nihal and Ambar under sections 11(1) and 11B(1) of SEBI Act, 1992 for the alleged violation of Section 12A(d) and (e) of SEBI Act, 1992, Regulation 3(i) read with Regulation 2(ha) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 and Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) PFUTP Regulations for trading in the shares of KBL while in possession of UPSI by Noticee No. 6.

5. A common Show Cause Notice dated December 11, 2019 (hereinafter referred to as **'SCN-2'**) was issued to Nihal Gautam Kulkarni (individual capacity) (hereinafter referred to as **"Noticee No. 7" / "Nihal"**) and A R Sathe (hereinafter referred to as **"Noticee No. 8" / "Sathe"**) and a common Supplementary Show Cause Notice dated July 24, 2020 (hereinafter referred to as **'SSCN-2'**) was issued to Noticee No. 7 & 8 in the matter of KBL to show cause as to why appropriate penalty and directions, be not issued against Noticee No. 7 & 8 under sections 11(1), 11(4), 11B(1), 11B(2) read with 15HA, and 11(4A) of SEBI Act, 1992 read with Rule 4(1) of AO Rules for the alleged violation of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) PFUTP Regulations for the fraud committed on KIL and other stakeholders including public shareholders i.e. minority shareholders by Noticee No. 7 & 8 together with A N Alawani and Noticee No. 1 to 6.

6. Show Cause Notice dated December 12, 2019 (hereinafter referred to as **'SCN-3'**)was issued to A N Alawani (hereinafter referred to as **"Noticee No. 9" / "Alawani"**) and a Supplementary Show Cause Notice dated July 24, 2020 (hereinafter referred to as **'SSCN-3'**) was issued to Noticee No. 9 in the matter of KBL to show cause as to why appropriate penalty and directions be not issued against Noticee No. 9 under sections 11(1), 11(4), 11B(1), 11B(2) read with 15G, 15HA, and 11(4A) of SEBI Act, 1992 read with Rule 4(1) of AO Rules for the alleged violation of Section 12A(d) and (e) of SEBI Act, 1992, Regulation 3(i) read with Regulation 2(ha) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations**,** 2015 for dealing on behalf of KIL in the shares of KBL while in possession of UPSI by Noticee No. 9 and for the alleged violation of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) PFUTP

`

Regulations for the fraud committed on KIL and other stakeholders including public shareholders (i.e. minority shareholders) by Noticee No. 9 together with Noticee No. 1 to 8.

7. The observations and allegations mentioned in the SCN-1, SCN-2, SCN-3, SSCN-1, SSCN-2 and SSCN-3 (hereinafter collectively referred to as **"SCNs"**) against Noticee No. 1 to 9 and LRs of Noticee No. 6 (hereinafter collectively referred to as **"Noticees"**) are as under:

7.1. **Management of KBL**: During the investigation period, it is noted that alongwith other directors of KBL as mentioned in the SCNs, Noticee No. 4, Noticee No. 6 and Noticee No. 9 were also Directors of KBL.

7.2. **Financial Performance of KBL:**

7.2.1. The profit and loss of KBL for the quarters ending June 2009 to March 2011 and Financial Years (FY) 2008-09 to 2010-11 are as under:

Table No. 1: Quarterly results

								Amount in Rs. Cr.
Description	**Jun- 09**	**Sep- 09**	**Dec- 09**	**Mar- 10**	**Jun- 10**	**Sep- 10**	**Dec- 10**	**Mar- 11**
Operating income	402.65	552.64	442.12	633.65	389.57	447.93	388.43	722.31
Other Income	3.07	3.30	0.22	28.13	1.66	1.70	1.63	1.71
Total income	405.72	555.94	442.34	661.78	391.23	449.64	390.06	724.02
Expenditure	-382.70	-489.33	-398.33	-562.42	-370.26	-406.04	-349.32	-666.28
Profit after tax (PAT)	**5.60**	**33.14**	**20.34**	**58.44**	**4.45**	**19.49**	**16.89**	**20.53**

Table No. 2: Yearly results

			Amount in Rs. Cr.
Description	**FY 2009**	**FY 2010**	**FY 2011**
Operating income	1836.40	2027.00	1946.90
Other Income	43.60	46.10	12.90
Total income	1880.00	2073.10	1959.80
Expenditure	1781.80	1900.10	1857.00
Profit after tax (PAT)	**67.00**	**117.50**	**61.40**

`

7.2.2. From the above table, it is observed that for the quarter ended September 2010, Profit After Tax (PAT) reduced to Rs.19.49 crore from Rs.33.14 crore in comparison to previous year quarter ended September 2009. Similarly, for the quarter ended June 2010, PAT reduced to Rs.4.45 crore from Rs.5.60 crore in the previous year quarter ended June 2009. Further, FY 2010-11, PAT has been reduced to Rs. 61.40 crore from Rs. 117.50 crore for FY 2009-10.

7.3. **Corporate Announcements:**

7.3.1. During the investigation period, certain corporate announcements were made by KBL. Some of the important corporate announcements made by KBL during the investigation period are as follows:

7.3.1.1. The financial results for the quarter July-September, 2010 was published on October 28, 2010 at 13:50 Hrs on BSE and at 16:10 Hrs on NSE. The impact of the financial results on price of KBL is as under

7.3.1.1.1. On BSE, the price of scrip decreased by 3.73% and 2.54% from Oct 27 to Oct 28 to Oct 29, 2010 respectively. For the same time the trading volume Increased by 142.30% and decreased by 72.12% from Oct 27 to Oct 28 to Oct 29, 2010 respectively.

7.3.1.1.2. On NSE, the price of scrip decreased by 1.95% and 1.92% from Oct 27 to Oct 28 to Oct 29, 2010 respectively. For the same time the trading volume Increased by 265.93% and decreased by 38.52% from Oct 27, to Oct 28 to Oct 29, 2010 respectively

7.3.1.2. The financial results for the quarter and year ended on March 31, 2011, in which advances given to Kirloskar Construction and Engineers Ltd. (herein after referred to as **"KCEL"**) was written-off (capital loss) was published on April 26, 2011 at 16:28 Hrs on BSE and at 16:15 Hrs on NSE. The impact of the financial results on price of KBL is as under:

7.3.1.2.1. On BSE, the price of scrip increased by 15.70% from Apr 26 to Apr 27, 2011. For the same time the trading volume Increased by 5518.22% from Apr 26 to Apr 27, 2011.

`

7.3.1.2.2. On NSE, the price of scrip increased by 16.85% from Apr 26 to Apr 27, 2011. For the same time the trading volume Increased by 2489.25% from Apr 26 to Apr 27, 2011.

7.4. **Financial results for the quarter July-September, 2010:**

7.4.1. It is noted that the financial results for the quarter July-September, 2010 was published on October 28, 2010. The chronology of events leading up to the disclosure of financial results of quarter July - September 2010 on October 28, 2010 on exchange platform, which is as under:

Table No. 3

Sl. No.	Subject Matter of the Event	Relevant Date
1.	Interim monthly financial information* for July 2010 to Kirloskar Group – Management Operating Board (KG-MOB)	August 06, 2010
2.	Viability study report of Kirloskar Constructions and Engineers Ltd. (KCEL)	August 28, 2010
3.	Re-circulated - Viability study report on KCEL	September 01, 2010
4.	Interim monthly financial information for August, 2010 to KG-MOB	September 03, 2010
5.	Notice of Board meeting scheduled on October 28, 2010	October 11, 2010
6.	Intimation of the Board meeting to Stock Exchanges	October 12, 2010
7.	Intimation regarding closure of Trading Window	October 18, 2010
8.	Agenda for the Board meeting along with draft financials for September 30, 2010	October 20, 2010
9.	Interim monthly financial information for September, 2010	October 25, 2010
10.	Financial results forwarded to BSE and NSE for quarter and half years ended September 30, 2010	October 28, 2010
**Monthly financial information was shared with promoters/ directors/ key managerial personnel jointly referred as KG- MOB (Kirloskar Group- Management Operating Board) on monthly basis.*		

7.4.2. The interim monthly financials information of KBL for July 2010, August 2010 and September 2010, inter alia, were shared with Noticee No. 4, 5, 6, & 9.

7.4.3. The interim monthly financial information (hereinafter referred to as **"KG MOB Report"**) for July 2010, August 2010 and September 2010 was shared with KG-MOB on August 06, 2010, September 03, 2010 and October 25, 2010 respectively: The said KG MOB Report contains monthly and yearly financial facts and figures regarding Profit and loss account, fixed cost comparative analysis with Annual Operating Plan (AOP), Balance sheet, Fund flow

`

statement, cash generation report, Overview of the capital market performance of the company, Key financial ratios, Overview of subsidiary accounts, Manpower productivity, Details of borrowing outstanding of the company as of date etc.

7.4.4. From the quarterly results, it was observed that the operating income during quarter ended September 30, 2010 decreased to Rs.447.93 crore from Rs.552.64 crore in the previous year quarter (September 2009) i.e. a decrease of Rs.104.71 crore (i.e.-18.95%). In the same period, Profit After Tax (PAT) also decreased to Rs.19.49 (quarter ended September 30, 2010) crore from Rs.33.14 crore (quarter ended September 30, 2009) i.e. a decrease of Rs.13.65 crore (i.e.-41.19%).

7.4.5. From the monthly financial results for July 2010 and August 2010 shared with KG-MOB (including Noticee No. 4 to 7 & 9), it was observed that:

7.4.5.1. the total income for month July, 2010 increased to Rs.142.0 crore from Rs.122.8 crore in comparison to the previous year month (July 2009) i.e. an increase of Rs.19.2 crore (or 15.63%). However, in the same period, PAT decreased to Rs.18.0 crore (July 2010) from Rs.31.0 crore (July 2009) i.e. a decrease of Rs.13 crore (i.e.-41.94%).

7.4.5.2. the total income for month August, 2010 decreased to Rs.149.10 crore from Rs.277.10 crore in comparison to the previous year month (August 2009) i.e. a decrease of Rs.128.0 crore (i.e.-46.19%). In the same period, PAT decreased to Rs.11.1 (August 2010) crore from Rs.22.9 crore (August 2009) i.e. a decrease of Rs.11.8 crore (i.e.-51.53%).

7.4.6. Thus, it was alleged that the financial position of KBL in September 2010 had deteriorated both on monthly and quarterly basis in comparison to previous year (2009) month and quarter respectively.

7.5. **Financial results for the quarter and year ended on March 31, 2011, in which loan to KCEL was written-off:**

7.5.1. It was observed that a note was attached with the agenda of board meeting of KBL dated March 8, 2010, regarding performance and strategic options for KCEL. In the note, inter-alia, it was mentioned, KCEL was incurring losses

`

consecutively since past three years. Three strategic options were suggested for KCEL out of which one was Divestment – which stated that there could be a loss of about Rs.53 crore to Rs.58 crore on 100% stake sale. This shall be a capital loss and one time.

7.5.2. The board meeting of KBL dated March 8, 2010, inter-alia, was attended by Noticee No. 4, 6, & 9.

7.5.3. In the minutes of the board meeting of KBL dated July 27, 2010, while discussing the financial result of KBL for the quarter ended June 30, 2010, it was recorded that a presentation on KCEL was sought by some of the board members. A.N. Alawani was present in this board meeting. Accordingly, a report on the viability study of KCEL was prepared.

7.5.4. A report on the viability study of KCEL, inter-alia, was shared with the Noticee No. 4, 5, & 6 on August 28, 2010.

7.5.5. In the board meeting of KBL dated September 3, 2010, one of the agenda was to consider disposal of investments in KCEL. In the said board meeting, three options were considered for KCEL – (a) Option 1 - Sale of KCEL (as is where is basis and other options), (b) Option 2 - Merger with KBL, (c) Option 3 - Continuance of KCEL on standalone basis. Out of which the minimum loss that would incur to KBL would be around Rs.64.96 crore through Option 1 - sale of KCEL on 'As is where is basis'. The board approved the option 1 i.e. for sale of KCEL for value upto Rs.65 crore,

7.5.6. In the board meeting of KBL held on April 26, 2011, the board of KBL explored other options regarding KCEL and approved to write off Rs.67.47 crores towards loan in the form of advance given to KCEL. The same was disclosed to the stock exchanges on April 26, 2011 with financial results for the year and quarter ended on March 31, 2011**.**

7.5.7. Thus, it was observed that the amount written- off to the tune of Rs.67.47 crore was about 57.42% of the Profit After Tax of previous FY 2009-10 of KBL

7.6. **Price Sensitive Information (PSI) and Unpublished Price sensitive Information (UPSI):**

7.6.1. On the basis of above, following PSI were identified as UPSI, under Regulation 2(ha) read with regulation 2(k) of PIT Regulations, 1992:

`

Table No. 4

Sl. No.	Identified UPSI	UPSI Period
1.	Capital loss of the investment / advances given to Kirloskar Constructions and Engineers Ltd. (KCEL) wholly owned subsidiary of KBL	March 8, 2010 to April 26, 2011
2.	Financial results for the quarter July-September 2010.	August 06, 2010 to October 28, 2010

7.7. **Insiders with respect to the identified UPSI:**

7.7.1. It is observed that following persons were insiders with respect to the identified UPSI i.e. financial result for quarter July-September 2010 and capital loss of the investment / advances given to KCEL:-

Table No. 5

Sr. No.	Name	Designation	Basis for in possession of UPSI
1	Gautam Achyut Kulkami – Noticee No. 6 (Since deceased) – Husband of Noticee No. 3 and Father of Noticee No. 7	Promoter/ Vice-Chairman / Director	• Attended board meeting of KBL on March 8, 2010, where in note on performance and strategic options for KCEL was discussed. • Received financial of KBL for the month July and August 2010 as part of KG-MOB on August 6, 2010 and September 3, 2010 respectively. • Received viability report of KCEL on August 28, 2010.
2	Rahul Chandrakant Kirloska – Noticee No. 4	Promoter/Director	• Attended board meeting of KBL on March 8, 2010, where in note on performance and strategic options for KCEL was discussed. • Received financial of KBL for the month July and August 2010 as part of KG-MOB on August 6, 2010 and September 3, 2010 respectively. • Received viability report of KCEL on August 28, 2010.
3	Atul Chandrakant Kirloskar - Noticee No. 5	Promoter	• Promoter of KBL and being relative i.e. brother of Rahul Kirloskar and Brother in law of Gautam Kulkarni – he is deemed to be connected person and is reasonably expected to have access to unpublished price sensitive information about performance and strategic options for KCEL. • Received financial of KBL for the month July and August 2010 as part of KG-MOB on August 6, 2010 and September 3, 2010 respectively. • Received viability report of KCEL on August 28, 2010.

`

Sr. No.	Name	Designation	Basis for in possession of UPSI
4	Jyotsna G. Kulkami - Noticee No. 3	Promoter	• Promoter and being relative i.e. wife of Gautam Kulkarni (who was director in KBL) – she is deemed to be connected person and reasonably expected to have access to unpublished price sensitive information.
5	Arti A, Kirloskar - Noticee No. 2	Promoter	• Promoter and being relative i.e. wife of Atul Kirloskar (who had received monthly financial of KBL and viability report of KCEL) – she is deemed to be connected person and she is reasonably expected to have access to unpublished price sensitive information.
6	Alpana R. Kirloskar - Noticee No. 1	Promoter	• Promoter and being relative i.e. wife of Rahul Kirloskar (who was director in KBL) – she is deemed to be connected person and she is reasonably expected to have access to unpublished price sensitive information.
7	Nihal Kulkarni - Noticee No. 7	Director	• Nihal Kulkarni being relative i.e. son of Gautam Kulkarni– he is deemed to be connected person and is reasonably expected to have access to unpublished price sensitive information about performance and strategic options for KCEL.
8	A N Alawani - Noticee No. 9	Director	• Attended board meeting of KBL on March 8, 2010, where in note on performance and strategic options for KCEL was discussed. • Received financial of KBL for the month July and August 2010 as part of KG-MOB on August 6, 2010 and September 3, 2010 respectively. • Attended board meeting of KBL on September 3, 2010, in which viability report of KCEL was discussed.

7.8. **Trading in the shares of KBL:**

7.8.1. It was observed that on October 06, 2010, there was an inter-se transfer of 1,07,18,400 shares through block deal on stock exchange platform among 7 promoter entities of KBL. The details of the transactions in the following table is as under:

Table No. 6

Name	Designation	Buy (Qty)	Sell (Qty)	Avg. Buy/ Sell Price (Rs.)
Alpana Rahul Kirloskar	Promoter	0	19,49,900	256
Arti Atul Kirloskar	Promoter	0	19,49,900	256
Jyotsna Gautam Kulkarni	Promoter	0	19,49,900	256

`

Name	Designation	Buy (Qty)	Sell (Qty)	Avg. Buy/ Sell Price (Rs.)
Rahul Chandrakant Kirloskar	Director / Promoter	0	16,22,900	256
Atul Chandrakant	Promoter	0	16,22,900	256
Gautam Achyut Kulkarni	Vice Chairman / Promoter	0	16,22,900	256
Kirloskar Industries Limited	Promoter	1,07,18,400	0	256
Total		**1,07,18,400**	**1,07,18,400**	

7.8.2. Pursuant to the board resolution dated July 28, 2010, the authority was granted to A N Alawani (Director of KIL) and Aditi Chirmule (Company Secretary) to execute the above transaction on behalf of KIL and accordingly placed the order.

7.9. In view of the above, following is alleged:

7.9.1. That the Noticee 1 to 6, being insiders, traded in the shares of KBL when in possession of UPSI, thereby, they violated the provisions of Section 12A(d) and (e) of SEBI Act, 1992, Regulation 3(i) read with Regulation 2(ha) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

7.9.2. That the Noticee no. 9, being insider, traded on behalf of KIL in the shares of KBL when in possession of UPSI, thereby, he violated the provisions of Section 12A(d) and (e) of SEBI Act, 1992, Regulation 3(i) read with Regulation 2(ha) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

7.10. **Unlawful /ill-gotten gains /loss avoided**

7.10.1. The unlawful /ill-gotten gains made by the selling insiders is as under:

Table No. 7

Sl. No.	Name	No of Shares Sold	Wtg Avg Sale Price (Rs.)	Closing price on April 27, 2011 (Rs.) **	Unlawful Gain (Rs.) *
1	Alpana Rahul Kirloskar	19,49,900	256	178.30	15,15,07,230
2	Arti Atul Kirloskar	19,49,900	256	178.30	15,15,07,230
3	Jyotsna Gautam Kulkarni	19,49,900	256	178.30	15,15,07,230
4	Rahul Chandrakant Kirloskar	16,22,900	256	178.30	12,60,99,330
5	Atul Chandrakant Kirloskar	16,22,900	256	178.30	12,60,99,330
6	Gautam Achyut Kulkarni – Since deceased ***	16,22,900	256	178.30	12,60,99,330

`

** Basis of calculation-* *(No of shares sold when in possession of UPSI X weighted average sale price) – (No. of shares sold when in possession of UPSI X Closing price on the day of UPSI becoming public)*
*** The announcement of the financial results for the quarter July-September, 2010 was published on October 28, 2010 at 13:50 Hrs on BSE and at 16:10 Hrs on NSE. Further, the announcement of the financial results for the quarter and year ended on March 31, 2011, in which advances given to KCEL was written-off (capital loss) was published on April 26, 2011 at 16:28 Hrs on BSE and at 16:15 Hrs on NSE. In view of this as the UPSI period of capital loss was longer than the financial result for quarter July-September 2010, the closing price of scrip on April 27, 2011 i.e. Rs.178.30 at BSE is considered for computation of wrongful gains.*
**** Gautam Achyut Kulkarni had passed away on September 20, 2017, and the legal representative of Late Gautam Achyut Kulkarni are (i) Jyotsna Gautam Kulkarni, (ii) Nihal Gautam Kulkarni and (iii) Ambar Gautam Kulkarni.*

7.10.2. It is noted that Noticee No. 6 viz. Gautam Achyut Kulkarni had passed away on September 20, 2017, before the initiation of these proceedings and as per Section 28B of SEBI Act, 1992, any proceeding for disgorgement which could have been initiated against the deceased if he had survived, may be initiated against the legal representatives of deceased.

7.11. **Pre-clearances**

7.11.1. It is noted that the during the investigation period the insiders namely, Noticee No.1, 3, 4, & 6 who have dealt in the shares of KBL on October 06, 2010 were required to take pre-clearance from KBL.

7.11.2. Noticee No.1, 3, 4, & 6 Vide separate letters dated September 28, 2010, has sought pre-clearance from KBL while giving a declaration that they have no access to Unpublished Price Sensitive Information by the signing of the undertaking.

7.11.3. It is observed that the Noticee No. 1, 3 and 4 were in possession of UPSI when they had applied for pre-clearances on September 28, 2010, however while seeking pre-clearance from the KBL they had given undertaking that they had no access to UPSI. Therefore, it is alleged that the declarations / undertakings given by the above mentioned Noticees were incorrect and thereby violated Part A, of clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of PIT Regulations 1992.

7.12. **Decision of KIL to purchase shares of KBL from promoter entities**

`

7.12.1. KIL is listed on BSE and NSE. KIL, a corporate promoter of KBL, was holding 82,69,638 shares i.e. 10.42% in KBL before the transaction dated October 6, 2010.

7.12.2. During the investigation period, it is noted that alongwith other directors as mentioned in the SCNs, Noticee No. 5, 7, 8 & 9 were also directors of KIL and Noticee No. 5 & 7 were promoters of KIL.

7.12.3. During the investigation period, it is noted that Noticee No. 8 was common directors between KBL and KIL alongwith other directors as mentioned in the SCNS.

7.12.4. It is also noted that the individual promoters of KBL who sold their shares of KBL to KIL are also promoters in KIL, the list is as under

Table No. 8

Sl. No.	Name	Promoter/Director in KBL	Promoter/Director in KIL
1.	Alpana Rahul Kirloskar	Promoter	Promoter
2.	Arti Atul Kirloskar	Promoter	Promoter
3.	Jyotsna Gautam Kulkarni	Promoter	Promoter
4.	Rahul Chandrakant Kirloskar	Director/ Promoter	Promoter
5.	Atul Chandrakant Kirloskar	Promoter	Director/ Promoter
6.	Late Gautam Achyut Kulkarni	Vice Chairman / Promoter	Director/ Promoter

7.12.5. It is also noted that A R Sathe who was director in KIL during the investigation period was also Managing Director in KCEL (since June 10, 2010). He was Vice President – Finance in KBL before becoming director in KCEL.

7.12.6. In the minutes of Board Meeting of KBL dated July 27, 2010, with respect to financial results of KBL, inter-alia one of the director, Mrs. Lalita Gupte stated that *"....Mrs. Lalita Gupte expressed that at this scale of operations, the profitability is very low"*

7.12.7. In Board Meeting of KBL dated July 27, 2010, Noticee No. 9, who was the common director between KIL and KBL was present.

7.12.8. KIL in its Board Meeting held on July 28, 2010, resolved and decided to buy the shares of KBL from the promoters of KBL. The following are noted:

`

7.12.8.1. This Board Meeting of KIL was held on July 28, 2010 i.e. immediately on the next day of the board meeting of KBL which was held on July 27, 2010.

7.12.8.2. The agenda item to invest the surplus fund in equity shares of KBL was placed as an additional item in the Board Meeting of KIL held on July 28, 2010.

7.12.8.3. The minutes of the meeting inter alia recorded that the Chairman (Mr. Atul C Kirloskar), informed the Board that the company had surplus funds to the extent of approximately Rs.300 crores. He proposed to gainfully employ these funds, in the equity shares of KBL as long term investments, looking at the current stock market scenario and profitability and growth of KBL.

7.12.8.4. Atul C Kirloskar, Chairman of KIL, was one of the promoters of KIL and KIL was considering to buy shares from the promoters of KBL, he vacated the Chair. The non-interested directors present in the meeting requested A R Sathe to occupy the Chair.

7.12.8.5. Atul C Kirloskar and Nihal Kulkarni (Noticee No. 7) being interested in the business did not participate in the discussion or vote on the proposal.

7.12.8.6. A R Sathe (Noticee No.8) in the meeting also stated that considering the provisions of Section 372A of the Companies Act, 1956, and the quantum of Investment made by the Company till date, the company had approximately Rs.288 crore available for the proposed investment.

7.12.8.7. Finally, KIL Board resolved and approved to make investment aggregating to sum of not exceeding Rs.275 crores, inclusive of the taxes and brokerage as applicable, by way of purchase of equity shares of KBL. A N Alawani (Noticee No. 9), Director of KIL and Aditi Chirmule, company secretary, were authorised to execute the decision of the board

7.12.9. The following is observed about the directors who were present in the board meeting of KIL dated July 28, 2010 with respect to agenda to buy shares of KBL from the promoters of KBL:

Table No. 9

`

Sl. No.	Name of Directors	Particulars	Observation
1.	Atul Chandrakant Kirloskar	Chairman of KIL, vacated the Chair as was interested in the agenda.	• Proposed to acquire more shares of KBL • Was aware of the deteriorating financial position of KBL. However did not mention about it in the meeting. • Did not participated in the discussion and not voted for the proposal.
2.	Anil N. Alawani	Non-Executive Independent Director	• Was aware of the deteriorating financial position of KBL. • Was also aware of the precarious condition of KCEL and its impact on financials of KBL. • Participated and voted for the proposal. • Did not comment on the specific noting in the minutes i.e. "profitability and growth of KBL, it is expected to achieve good returns from such investments."
3.	Nihal Gautam Kulkarni	Executive Director	• Son of Gautam Kulkarni and reasonably expected to have access to price sensitive information of KBL. • Did not participated in the discussion and not voted for the proposal.
4.	Vijay K. Bajhal	Non-Executive Independent Director	• Participated and voted for the proposal
5.	A. R. Sathe	Non-Executive Independent Director, Chaired the agenda	• Was aware of the precarious condition of KCEL and its impact on financials of KBL. • Participated and voted for the proposal. • Did not comment on the specific noting in the minutes i.e. "profitability and growth of KBL, it is expected to achieve good returns from such investments"

7.12.10. KIL informed that financial performance of KBL (monthly, quarterly, etc.) for the period April 1, 2009 to December 31, 2010 was not received by KIL.

7.12.11. Following is observed on the decision of purchase of shares of KBL by KIL

7.12.11.1. That 4 out of 5 directors of KIL who attended the board meeting of KIL dated July 28, 2010 were aware of the deteriorating financial position of KBL and one director was not aware of the same. Further, the monthly financials of the KBL was not known to KIL.

7.12.11.2. Atul C Kirloskar, A N Alawani, Nihal Kulkarni and A R Sathe being directors of KIL, thereby had statutory fiduciary duty towards KIL and

`

they were duty bound to check if the decision/actions are in the interest of the company.

7.12.11.3. A N Alawani and A R Sathe, deliberated and actively participated on the agenda to invest in the shares of KBL, while they were aware of the deteriorating financial position of KBL. They therefore induced KIL to deal in securities of KBL.

7.12.11.4. The utmost beneficiary of this decision were the 6 individual promoters of KBL (Noticee No. 1 to 6) from whom the shares of KBL were decided to be bought.

7.12.11.5. By inducing KIL to buy shares of KBL, Noticee No.5, 7, 8 & 9 aided 6 individual promoters of KBL (Noticee No. 1 to 6) in dumping their shares of KBL to KIL. Thus, the Noticee No. 1 to 6 were able to offload their holdings in KBL at a better valuation at the cost of the minority shareholders and other stakeholders of KIL

7.12.11.6. Further, by failing to perform their duty as directors of KIL, these four directors i.e. Noticee No.5, 7, 8 & 9 committed fraud on the public shareholders of KIL i.e. minority shareholders of KIL.

7.13. **Summary of Allegations:** It is alleged in the SCNs and SSCNs that:

7.13.1. The Noticee 1 to 6, being insiders, traded in the shares of KBL while in the possession of UPSI, and thereby, they violated the provisions of Section 12A(d) and (e) of SEBI Act, 1992, Regulation 3(i) read with Regulation 2(ha) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

7.13.2. The Noticee no. 9, being an insider, traded on behalf of KIL in the shares of KBL while in the possession of UPSI, and thereby, he violated the provisions of Section 12A(d) and (e) of SEBI Act, 1992, Regulation 3(i) read with Regulation 2(ha) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

7.13.3. The declarations / undertakings given by the Noticee No. 1, 3 and 4 were incorrect and thereby violated Part A, of clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of PIT Regulations 1992.

`

7.13.4. The Noticee No. 1 to 6 together with Noticee No. 7 to 9 committed a fraud on KIL and public shareholders of KIL, and thereby violated Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations.

7.14. It is noted that SSCNs dated July 24, 2020 had referred to the Section 15G of SEBI Act, 1992. Therefore, by virtue Section 15G of SEBI Act, 1992 Noticee No. 1 to 6 and Noticee No. 9 are also alleged to have traded in the shares of KBL on October 06, 2010 on the basis of UPSI.

8. **Delivery of SCN:** From the documents available on records, it is noted that SCN-1 and SSCN-1 was delivered to Noticee No. 1 to 5 and to LRs of Noticee No. 6; SCN-2 and SSCN-2 was delivered to was delivered to Noticee No. 7 & 8; SCN-3 and SSCN-3 was delivered to Noticee No. 9. The proof of delivery is available on record.

INSPECTION OF DOCUMENTS:

9. From the document available on records, it is noted Noticee No. 1 to 5, 7, 8 & 9 vide separate letters had requested copies of list of document attached / mentioned therein. SEBI vide letter separate letters had provided the copies of documents relied upon in respective SCN to Noticee No. 1 to 5, 7, 8 & 9. The details in this regard is as under:

Table No. 10

Sr. No.	Noticee No.	Noticees Name	List of Documents sought by Noticee vide letter dated	Copy of Documents relied upon in respective SCN provided by SEBI vide letter dated
1	1	Alpana R. Kirloskar	December 27, 2019	January 21, 2020
			February 07, 2020	February 27, 2020
2	2	Arti Atul Kirloskar	December 27, 2019	January 21, 2020

`

Sr. No.	Noticee No.	Noticees Name	List of Documents sought by Noticee vide letter dated	Copy of Documents relied upon in respective SCN provided by SEBI vide letter dated
			February 11, 2020	February 27, 2020
3	3	Jyotsna Gautam Kulkarni	December 31, 2019	January 21, 2020
			February 14, 2020	February 27, 2020
4	4	Rahul Chandrakant Kirloskar	December 27, 2019	January 21, 2020
			February 07, 2020	February 27, 2020
5	5	Atul Chandrakant Kirloskar	December 27, 2019	January 21, 2020
			February 11, 2020	February 27, 2020
6	7	Nihal Kulkarni	December 30, 2019	January 21, 2020
			February 07, 2020	February 27, 2020
7	8	A R Sathe	January 16, 2020	January 24, 2020
			February 12, 2020	February 27, 2020
8	9	A N Alawani	December 30, 2019	January 21, 2020
			February 12, 2020	February 27, 2020

9.1. Further, it is noted that Noticee No. 8 vide letter dated January 16, 2020 had also requested for inspection of documents. SEBI vide notice dated January 24, 2020 had granted an opportunity of inspection to Noticee No. 8 on January 31, 2020 and the same was availed by Noticee No. 8.

REPLY, WRITTEN SUBMISSIONS AND ADDITIONAL SUBMISSIONS:

10. It is noted that Nihal and Ambar had authorized Noticee No. 3 to submit reply in the matter on behalf of them as LRs of Noticee No.6. Noitcee No. 3 on behalf of LRs of Noticee No. 6 vide letter dated December 31, 2019 submitted their reply to the SCN-1. The reply of LRs of Noticee No. 6 in brief is as under:

10.1. Section 28B was added vide Act 13 of 2018 w.e.f. March 8, 2019 and therefore can never save a cause which arose in October, 2010 i.e. before the Section was even put into the Act.

10.2. Section 28B of the SEBI Act deals with "continuation of proceedings" for recovery of amount which a deceased would have been liable to pay if he had not died, upon conclusion of investigation against such person but before initiation of proceedings of recovery. This pre-supposes that proceedings under the relevant charging sections have already been initiated against the deceased during his / her lifetime. A legal representative shall be liable only in case where an investigation in a matter has been initiated and an order for disgorgement, refund or an action for recovery before the

`

Recovery Officer, as the case may be, under the SEBI Act has been passed during such individual's lifetime.

10.3. Noticee No. 6 passed away on September 20, 2017, before the initiation of any proceedings by SEBI against Noticee No.6, whether for determination of an offence under Sections 11(1), Section 11B(1) or for disgorgement under Section 28B of SEBI Act. During Noticee No.6 lifetime, it has not even been determined if Noticee No.6 was indeed guilty of the allegation made against.

10.4. Section 28B(2)(a) pertains to proceedings for disgorgement, refund or an action for recovery initiated against the deceased before his death. No such proceeding was initiated against Mr. Gautam Kulkarni before his death and therefore 28B(2)(a) is *ex facie* inapplicable.

10.5. Section 28B(1) and Section 28B(2)(b) saves only those proceedings where an order has been passed against a deceased holding him guilty and liable to pay some penalty or disgorgement amount. Reliance is placed on *Shailesh S. Jhaveri v. SEBI* (Appeal No. 79 of 2012, decided on October, 4, 2012), wherein Hon'ble SAT examined the meaning of "disgorgement".

10.6. In view of the above, any such proceedings now initiated would stand abated

11. Noticee No. 1 & 4 and Noticee No. 2 & 5 vide separate but identical common letters dated July 14, 2020 submitted their reply to the SCN-1. Noitcee No. 3 vide letter dated nil received via email on July 14, 2020 submitted her reply to the SCN-1. Noticee No. 7 vide letter dated July 14, 2020 stated that he adopt and incorporate all submission made by the Noticee No. 1, 2, 4 & 5 vide letter dated July 14, 2020 in the matter. Noticee No. 1 to 5, LRs of Noticee No. 6 and Noticee No. 7 vide common letter dated August 05, 2020 submitted additional written submissions in the matter. Further, Noticee No. 1 to 5 & 7 vide common letter dated September 14, 2020 and September 18, 2020 had submitted their additional submissions in the matter. Their cumulative submissions in brief are as under:

11.1. **Inordinate Delay:** SCN issued after inordinate, unexplained, unreasonable delay of 9 (nine) years from the date of Transaction dated October 06, 2010 and 7 years from the time SEBI first investigated the matter and after several rounds of similar inquiries and investigations previously conducted and closed. They have placed reliance in the Hon'ble Securities Appellate Tribunal (hereinafter refer to as "SAT") order dated January 31, 2020 in matter of *Ashlesh Gunvantbhai Shah vs Securities and Exchange Board of India*.

11.2. **Inspection:** Several documents (including investigation report) that were referred to or otherwise attached to SCN were incomplete or not provided.

11.3. **Motivated SCN and SCN disregards complaints made by Noticee No. 4 & 5:** SCN is motivated by and exclusively based on complaints from Mr. Sanjay Kirloskar

`

Chairman and Managing Director of KBL. No Show Cause Notice has been issued to Mrs. Pratima Kirloskar, the wife of Mr. Sanjay Kirloskar in respect of that transaction taken place on October 14, 2010.

11.4. **SCN has been issued without application of mind:** Firstly, the transaction dated October 06, 2010 was a transfer inter-se of shares of KBL amongst the promoter group and necessary filings and disclosures recording the transaction under Regulation 3(3) and Regulation 3 (4) of the Takeover Regulations, 1997 have been made by the Noticees. The inter-se promoter transaction falls outside the purview of the applicability of the PIT Regulations, 1992. Secondly, the SCN does not take into consideration the submissions already made by the Noticees and KIL to SEBI in relation to the 2010 Transaction from time to time since 2012.

11.5. That SEBI has issued the Supplementary SCNs purporting to modify the SCNs. The SCNs failed to mention the charging / liability provisions for penaltyand are therefore in violation of natural justice. The SCNs and SSCNs did not set out as to what action is actually being proposed as against the Noticee for the alleged violations. In this regard, reliance is placed in the matter of *Gorkha Security Services Vs. The Government (NCT of Delhi) {2014 (9) SCC 105},* decided by the Hon'ble Supreme Court.

11.6. **Alleged UPSI-1:** Capital loss of the investment i.e. loans / advances given to KCEL, a wholly owned subsidiary of KBL:

11.6.1. *Write-off of loans advanced to KCEL does not amount to whole or substantial disposal of undertaking of KBL and therefore does not qualify as "price sensitive information" under Section 2(ha) of the SEBI PIT Regulations*

11.6.1.1. To attract the explanation to Regulation 2(ha) of the PIT Regulations, KBL needs to dispose off whole or substantial part of the undertaking itself. The transaction of writing off a loan of Rs.67.47 crore extended to a subsidiary does not meet this criterion.

11.6.1.2. Even after write-off of the loan of Rs.67.47 crore, KCEL was a going concern with active business transactions in KBL.

11.6.1.3. KBL has not made any announcement of having disposed of KCEL (including when the Board of KBL decided to write-off the loans advanced to KCEL on April 26, 2011), as required under the provisions of the Listing Agreement.

11.6.1.4. That KCEL continues to be a wholly owned subsidiary of KBL and has been re-christened as "Karad Projects and Motors Limited" and has therefore not been disposed of till date.

11.6.2. KCEL was acquired by KBL in the year 2006-07. KCEL was accumulating losses over 3 years (i.e. 2007-2010) and this information was available in the public domain.

`

11.6.3. Additional loans were advanced to KCEL by KBL throughout the financial year 2010-11, establishing that KBL thought the loans advanced to KCEL were recoverable:

11.6.3.1. In Board meeting of KBL held on July 27, 2010, KBL had purchased claims receivables from KCEL amounting to Rs. 73.5 crore and adjusted the same against the loan paid to KCEL. This establishes that KBL management did not envisage any material default on the part of KCEL repayment of the loans advanced to it by KBL

11.6.3.2. KBL advanced money to KCEL from time to time depending on the business requirements and with an intention not to hamper the projects being executed by KCEL for KBL as well as to fund KCEL's own independent projects. Even after the write-off of the loans of KCEL, in 2011, KBL made further capital infusion of an amount of Rs. 25 crore in KCEL

11.6.3.3. Thus, neither the management nor the Board of KBL envisage that KBL would be writing off any loans advanced to KCEL, either prior to October 06, 2010 and for several months thereafter i.e. until March 2011.

11.6.4. Board members of KBL did not consider findings of the Viability Report to be important or of material significance: The Viability Report having been circulated to the board of directors of KBL prior to the board meeting dated September 03, 2010, the recommendation in the report were neither considered nor adopted during such meetings. The Viability Report was available to the Board of KBL only after the decision to purchase the shares of KBL held by the Noticees to KIL was made by KIL on July 28, 2010 and hence, the Viability Report was not even in existence as on July 28, 2010.

11.6.5. Even if viability report suggested a one-time loss, at the same time KBL was considering sale of Gondwana Engineering Limited (GEL) at a substantial profit. In September 03, 2010 Board Meeting, KBL proposed to dispose off the entire stake in GEL at a price of more than Rs. 50 Crores and the profit from the disposal of the same would have been about Rs. 42.4 crores. After taking the effect of the proposed sale of GEL as a set off against the aforesaid figure of Rs. 64.96 crores in relation to KCEL then the net adjustment would have been reduced to merely Rs. 15 crores approximately i.e. 1.2% of the consolidated balance sheet size of KBL and 1.4% of the asset size of KBL.

11.6.6. The first time that the option to write-off the loans (Rs.67.47 crore) advanced to KCEL was considered or discussed by the KBL Board was in its meeting on April 26, 2011 i.e. six months after October 06, 2010 transaction and hence this cannot be construed as UPSI on the date of October 06, 201 transaction.

11.6.7. KCEL was not a material subsidiary of KBL at the time of the 2010 Transaction: In light of asset size of KCEL vis a vis that of KBL, KCEL was not a "material subsidiary" of KBL as per the definition set out in the Listing Agreement, which

was applicable at the time of the 2010 Transaction. Hence, considering that KCEL itself does not qualify as a material subsidiary of KBL, the capital loss incurred by KBL in respect of KCEL cannot be construed to be material and therefore the same cannot be alleged as "price sensitive". Further, had KCEL been a material subsidiary, KBL would have been required to make disclosure of write off of loans to it under Clause 36 of the Listing Agreement when a decision was so made.

11.6.8. The discussions pertaining to capital loss of investment/advances given to KCEL during the period from March 8, 2010 upto April 26, 2011 cannot be alleged to be UPSI.

11.6.9. As per the Annual Report of KBL for FY 2009-10, KBL had, at that point in time, 12 (twelve) subsidiaries. Any discussion on various options pertaining to each or any of them is part of the ordinary course of management of KBL. KBL routinely granted loans and made investment and disposed of investments in subsidiary companies.

11.6.10. KCEL actually made sufficient profits and built up reserves after 2010: The said write off was immaterial and KCEL actually made sufficient profits and built up reserves after 2010. Since 2015, KCEL has been declaring dividend and has built up reserves of more than Rs. 95 Crores. Thus, KCEL was fully revived. There was no Capital loss.

11.6.11. It is denied that the information in relation to the capital loss of the investment/advances given to KCEL during March 8, 2010 to April 26, 2011 can be considered as "price sensitive" and UPSI.

11.7. **Alleged UPSI-2:** Financial results for the quarter July – September 2010:

11.7.1. The definition of price sensitive information includes "periodic financial results" of a company computed only on completion of each quarter and not monthly financial position of a company. Any other information which could be connected and eventually become part of the financial results cannot be considered to be equivalent to the "financial results".

11.7.2. KG-MOB report was being utilized by the management of KBL to ascertain the business progress of KBL. In *Gujarat NRE Mineral Resources Limited v. SEBI* [(2011) SCC Online SAT 186] the Hon'ble SAT held that activities done by a company in the normal course of its business cannot be said to be UPSI.

11.7.3. The entire basis of comparing quarter to quarter revenues and PAT between succeeding years to suggest deterioration in the financial position of KBL is faulty and erroneous. The comparison of the current quarter results with the immediately preceding quarter would show the trend in the current year.

11.7.4. The appropriate manner to evaluate a company's operating performance is to look at profit before tax ("PBT") and earnings before interest, depreciation, tax and amortization ("EBIDTA") and exclude exceptional items. A perusal of

`

Operating EBIDTA and Operating PBT clearly demonstrates better operating performance, year on year, by KBL, that (a) the Operating EBIDTA for the FY from 2009 to 2011 are Rs. 144.46 crores, Rs. 203.03 crores and Rs. 249.67 crores; and (b) Operating PBT for the FY from 2009 to 2011 are Rs. 93.41 crores, Rs. 142.99 crores and Rs. 174.36 crores.

11.7.5. The cash profits of KBL increased between FY 2008-09 FY 2009-10 and again in FY 2010-11. Thus, KBL's operating cash profit was increasing year on year at the relevant time, which proves that it was financially strong and a good investment.

11.7.6. There is no correlation between the revenue numbers and the corresponding PAT figures when computed on a monthly / quarterly basis. For example, when the revenues for Q3 for financial year 2010-11 were Rs. 388.42 crores the PAT was Rs. 16.88 crores and when in the next quarter (i.e. Q4) the revenues almost doubled to Rs. 720.63 crores the PAT increased merely by about Rs. 3 crores to Rs. 20.52 crores. Therefore, looking at numbers for a single quarter in isolation would not provide any trend that can establish performance (deteriorating or otherwise) of KBL.

11.7.7. The figure of PAT for FY 2010 includes a one-time income of an amount of Rs. 22.48 crore that was received as profit from sale of investment and recovery of bad debt of an amount of Rs. 7.71 crore and hence contains one-time income of an amount of Rs. 30.19 crores in the PAT figure of Rs. 117.52 crore. The PAT numbers of Rs. 61.36 crore for the FY 2011 have been arrived at after a write-off of loan of an amount of Rs. 67.47 crore granted to KCEL and hence the PAT numbers compared in no way reflective of the financial performance of KBL.

11.7.8. KBL's performance had improved in the second quarter of FY 2010-11. The monthly revenue numbers show an increase during the quarter June to September 2010. KBL's PBT also increased between quarter ending June 2010 and for the quarter ending September 2010. KBLs PAT also increased between June 2010 and September 2010 Hence, there is no real deterioration of the financial position of KBL in September 2010 on monthly and / or quarterly basis in comparison to previous year month and quarter respectively.

11.7.9. KBL uses the Project on Completion (POC) accounting method of recognizing profits and that the threshold limit for POC recognition has been increased from 35% in FY 2009-2010 to 50% in FY 2010-2011.

11.7.10. KBL has made 2 (two) investor presentations dated July 30, 2010, and October 28, 2010, respectively which were made after declaration of the quarterly financial results. These reflect positive outlook for KBL's business & financial condition and did not provide any negative guidance/suggestion on KBL's financial performance or deterioration in its financial position.

11.7.11. KBL has recommended a dividend of 175% each for FY 2009-10 and FY 2010-11 and 100% special dividend in FY 2009-10.

`

11.7.12. Financial results for the quarter ended March 31, 2011 (published on April 26, 2011) and increase in trading (price and volume) for the period April 26-27, 2011 are irrelevant qua the October 06, 2010 transaction.

11.7.13. It is denied that the information in relation to financial results for the quarter July-September 2010 can be considered as "price sensitive" and UPSI.

11.8. No impact on price of KBL share price due to disclosure of "alleged to be UPSI":

11.8.1. The publication of the financial results for the quarter July-September 2010 and financial year 2010-11 did not have any significant effect on the price and trading volume that was unusual or beyond the scope of previously observed trading patterns of KBL. Based on the analysis of trading patterns of the scrip of KBL on NSE and BSE, there is no extraordinary movement either in trading volume or trading pattern of the KBL stock around the October 06, 2010 which can suggest any price impact of the information alleged to be UPSI.

11.8.2. Further, on analysis of the trading data of the scrip of KBL between April 2010 to December 2015, shows that the price maintained levels below Rs. 200 between January 7, 2011 and May 5, 2014 for almost 39 months continuously. During the aforesaid period, on several occasions a price rise over 10% has been observed. Hence, this price movement has nothing to do with the information that is alleged to be price sensitive in relation to the October 06, 2010 transactions.

11.9. Noticees denied that they were in possession of any UPSI at the time to October 06, 2010 transaction and that they have defrauded the public shareholders of KIL by dumping their personal holding through that transaction.

11.10. The decision to purchase KBL shares was taken by KIL on July 28, 2010 i.e. 4 (four) months before the publication of KBL's financial results for the quarter July-September 2010 i.e. on October 28, 2010 and therefore had no impact or connection with the price of the scrip of KBL.

11.11. There is no information in the KG-MOB report for July 2010 or August 2010 that demonstrates or suggests a negative change in the financial position of KBL that could be construed as price sensitive. The KG-MOB Report for September 2010 was (as per SCN) furnished on October 11, 2010 after the trade on October 6, 2010.

11.12. The Viability Report suggested various options in respect of KCEL, no suggestion to write-off the loans granted to KCEL was made therein.

11.13. The notice and Agenda for the Board meeting of KBL scheduled on October 28, 2010 was circulated on October 11, 2010 and October 20, 2010 respectively i.e. 3 (three) months after the decision by KIL to acquire KBL shares from the Noticees was taken.

11.14. On July 28, 2010 when KIL had passed a board resolution for acquisition of KBL shares, the share price of KBL was Rs. 274 – 261 whereas on October 6, 2010, the share price of KBL was Rs. 256. Such reduction in the prices was to the advantage

`

and benefit of KIL and resulted in reduced consideration to the Noticees. It is therefore inconceivable that Noticees were acting on the basis of any UPSI.

11.15. Erroneous Computation of Alleged Unlawful / Illegal Gains: They did not possess any UPSI and have not made any unlawful gains by undertaking October 06, 2010 transaction. The price of KBL shares decreased from Rs. 256 on October 06, 2010 to about Rs. 154.35 on April 25, 2011 even prior to publication of information alleged UPSI and hence such a downward movement cannot be attributed to the alleged UPSI. The impact of the alleged UPSI on the share price needs to be examined from the date on which such information was published (in this case April 26, 2011). The price of KBL shares moved from Rs. 154.35 on April 25, 2011 all the way to Rs. 201.75 on April 28, 2011 (i.e. 2 (two) days after the announcement of the quarterly financial results of KBL) i.e. there was a positive impact on the share price as opposed to any unlawful / illegal gains by the Noticees.

11.16. The transaction was consummated when the trading window of KBL was not closed and it was an inter-se between the promoters, as disclosed to the stock exchange under Regulation 3(1)(e)(i) of the Takeover Regulations 1997 and under Regulation 13(3) of SEBI PIT Regulations.

11.17. Proper pre-clearances were taken in a bonafide manner on September 28, 2010 prior to consummation of transaction dated October 06, 2010 in compliance with KBL's Code of Conduct for Prevention of Insider Trading in Securities of KBL ("KBL Code of Conduct") and applicable laws.

11.18. The compliance officer of KBL has erred in granting the pre-clearance to the said Noticees, since KBL itself provided the alleged UPSI to the said Noticees.

11.19. It is denied that Noticee No. 1, 3, 4 and 6 were in possession of UPSI when they had applied for pre-clearance from KBL on September 28, 2010 and that the declarations/ undertakings provided by them while seeking pre-clearance were incorrect and thereby they have violated Part A of clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of the SEBI PIT Regulations.

11.20. That unless an offence of "insider trading" is first proven against Mr. Atul Kirloskar, Mr. Rahul Kirloskar and Mr. Gautam Kulkarni, the dependents of such "insiders" cannot be brought into picture. No UPSI in their possession at the time of the October 6, 2010 as has been alleged or at all, therefore, it would be incorrect to deal with "dependents" in respect of an offence of "insider trading". Noticee No.1, 2 & 3 submitted that the decision to sell KBL shares held by them was taken by their respective husbands and who have always been dealing with all their financial matters and that they were not aware of the rationale behind consummation of the 2010 Transaction.

11.21. KIL board considered the profitability and growth of KBL while making a decision to invest in the shares of KBL on the basis of generally available financial

information including but not limited to the current stock market scenario and the Annual Reports of KBL available in public domain.

11.22. KIL continues to hold KBL shares acquired under the 2010 Transaction as well as KBL shares held previously. A substantial portion of the proceeds from the sale of KBL shares were subsequently utilized by the Noticees for purchase of additional KIL shares which the Noticees continue to hold till date.

11.23. KIL holds 23.91% of KBL shares and the Noticees hold 15.39% of KIL sharesi.e. the Noticees in fact continue to hold a similar economic interest in KBL. After October 06, 2010 the Noticees increased their personal shareholding in KIL from 15.39% before the 2010 Transaction to 69.91 % as of April 24, 2014, (thereby increasing their economic interest in KBL from 1.60% to 16.72%). Hence, it would be incorrect to allege that the Noticees have defrauded the public shareholders of KIL by dumping their personal holding through the October 06, 2010 Transaction, or otherwise.

11.24. The price of KBL shares had risen by over 30% after the declaration of financial results in April 2011.

11.25. Mr. Atul C. Kirloskar and Mr. Nihal Kulkarni being interested in the agenda pertaining to investment of surplus funds of KIL in KBL in the Board meeting of KIL held on July 28, 2010, did not participate in the discussion or vote in the matter pertaining to the same, in compliance with Section 300 of the Companies Act, 1956.

11.26. Mr. A. N. Alawani had no reason to believe that the financial position of KBL was deteriorating or otherwise had any negative information pertaining to the affairs of KBL that could be construed as UPSI.

11.27. It is not disputed that the October 06, 2010 transaction happened through block deals the stock exchange. Prior to acquisition of KBL shares, KIL made a disclosure to the stock exchanges on September 28, 2010 under Regulation 3(3) of the Takeover Code 1997 of its intention to acquire KBL shares on or after October 6, 2010. This disclosure prior October 06, 2010 transaction ought to have given opportunity to the minority shareholders of KIL to exit their positions, should they have so desired.

11.28. KIL purchased the shares of KBL from the KBL promoters (Noticees) because the substantial quantity of shares was readily available with the Noticees and purchasing the same in the open market would have caused a rise in the share price and have had consequences in the market.

11.29. There being an inter-se transfer amongst the promoters, there existed no information asymmetry between the buyers and sellers. Reliance has been placed in the case of *Pooja Menghani vs SEBI (2017 15 SCC)*, wherein the Hon'ble Supreme Court of India has held that *"The unequal possession of information is fraudulent only when the information has been acquired in bad faith and thereby inducing an inequitable result to others."*

11.30. It is submitted that Section 15HA SEBI Act applies only if a person *inter alia indulges* in fraudulent practices relating to securities. In view of the aforesaid

`

submissions, the allegations of fraud against the Noticees are without merit and are unproved. Therefore, Section 15HA is inapplicable.

11.31. It is submitted that Section 15G of SEBI Act states that its invocation and application is preconditioned on the dealing of securities being on the basis of UPSI. It is therefore a necessary pre-requisite for SEBI to prove that the Noticees dealt in securities on the basis of UPSI before any penalty can be imposed on the Noticees. It is submitted that the SCNs and SSCNs does not even allege, that the Noticees undertook the October 06, 2010 transaction, on the basis of UPSI. Therefore, the necessary pre-condition to invoke and apply Section 15G has not been fulfilled by SEBI and thus, no penalty can be imposed on the Noticee No. 1 to 5 & 7.

11.32. It is well settled that delegated legislations (such as the PIT Regulations) cannot go beyond the parent legislation under which they are made (in this case the SEBI Act) and must be read in accordance therewith.

11.33. Without prejudice to the above submissions, the rationale of the October 06, 2010 Transaction was recorded in the minutes of the meeting of the KIL Board held on 28th July, 2010. Therefore, the basis of the October 06, 2010 transaction was not the alleged UPSI, but basis on which the October 06, 2010 transaction was undertaken was that firstly, KIL had approximately Rs. 300 crores surplus funds; secondly, it was proposed to gainfully employ these funds; thirdly there was an expectation of good returns from long term investment in KBL on the basis of the then current stock market scenario and the profitability and growth of KBL; and fourthly KIL had been traditionally investing in the shares of group companies as long term investments

11.34. There has been no failure on the part of the Noticees to comply with any provision of the SEBI Act, the rules or the regulations made or directions issued by the Board thereunder as alleged in the SCNs or otherwise. Therefore, Section 15HB is inapplicable

12. Noticee No. 9 vide letters dated July 14, 2020, August 05, 2020 and September 14, 2020 made his in the matter. Upon perusal of his submissions, it is noted that most of his submissions are similar or in line with the aforesaid submissions made by Noticee No. 1, 2, 4, 5 & 7 and therefore, the same are not reproduced below to avoid repetitions. Further, it is also noted that the during the course of hearing held on July 22, 2020, the Authorized Representative of Noticee No. 9 adopted the arguments made by the Authorized Representative of Noticee No. 1 to 5, 7 and LRs of Noticee No.6 as part of his submissions. Thus, the submissions of Noticee No. 9 other than the submissions made by Noticee No. 1, 2, 4, 5 & 7 in preceding paragraph in brief are as under:

12.1. KIL was / is a shareholder and promoter of KBL, and KBL was / is a promoter of KIL a fact that was publicly disclosed. Since both the buyer and the sellers in the

`

October 06, 2010 transaction were and are all promoters of KBL, it cannot be alleged that there was any suppression or deception or fraud involved at all.

12.2. In the Board Meeting of KIL dated July 28, 2010, the KIL Board, after having taken a collective decision to purchase the shares of KBL, had authorized Ms. Aditi Chirmule and A.N. Alawani to implement the decision of the Board and consequently they issued instructions on behalf of the KIL Board to implement the decision. It was resolved that the sale would be at the prevailing market rates on the date of the transaction. Hence, A.N. Alawani had not traded at all in KBL shares while in possession of any alleged UPSI as alleged in the SCN. It was KIL who had undertaken the trade and Ms. Aditi Chirmule and A.N. Alawani only implemented the KIL Board decision. The Noticee was acting only as an agent of KIL and since no such allegation has been levelled against the principal / company, no such allegation is maintainable against the Noticee as its agent.

12.3. One of the Selling Promoters i.e. Late Mr. Gautam Kulkarni was at about August 2010 diagnosed with cancer and was undergoing treatment. It was unclear as to when he would be in a position to conclude the sale and transfer of his shares. Therefore, the other Selling Promoters had decided that as far as possible, all should sell on the same day and at the same price. Thats why the said block deal execution was delayed till 6.10.2010 even though the said decision to buy the same was already taken at the said 28.7.2010 Board meeting of KIL.

12.4. **Submission regarding Board meeting of KBL held on 8.3.2010:**

12.4.1. Since the minutes of Board meeting of KBL held on March 08, 2010 are not being provided, it is settled law that a negative inference has to be drawn, that if provided, the said minutes would have negated the allegations in the SCN

12.4.2. The agenda of the 8.3.2010 Board meeting of KBL does not show or imply that KBL's performance or financials was deteriorating.

12.4.3. Despite his requests, SEBI has failed to provide the corresponding minutes of the 8.3.2010 Board meeting of KBL on the ground that they have not relied upon the same. He was unable to now recall and verify if matters pertaining to KCEL were actually discussed at all in the said 8.3.2010 Board meeting of KBL.

12.4.4. As regards the documents attached to the Agenda of the 8.3.2010 Board Meeting of KBL as relied on in the SCN, it is submitted that the table of contents of the agenda does not make any reference to the KCEL document as a part of the agenda or even proposed to discuss issues about KCEL.

12.4.5. The agenda of the 8.3.2010 Board meeting of KBL shows several options in respect of KCEL, which were proposed to be discussed. These options were (1) shifting of water related projects to Pune; (2) part merger with KBL; and (3) divestment. In respect of the divestment, ICICI Investment Banking Group had already been appointed and was closely working with the KBL management to

`

find an investor. *"Capital loss of the investment / advances given…"* by KBL to KCEL was not even put up for consideration at that stage.

12.5. **Submission regarding Board meeting of KBL held on 27.7.2010:**

12.5.1. The Minutes of the 27.7.2010 Board meeting of KBL do not reflect that KBL's performance or financials were at all poor or deteriorating. The quarterly results finalized during this meeting were immediately published and filed with the stock exchange on the same date and hence there was no information regarding KBL's financial performance that could thereafter be deemed to be unpublished price sensitive information.

12.5.2. The "Financial results for quarter July – September 2010" (i.e. the alleged UPSI) would not even have been in existence at the time of the 27.7.2010 meeting of KBL or even on 28.7.2010 meeting of KIL when the decision to purchase the KBL shares was taken.

12.5.3. The KG-MOB reports for July and August 2010 was made available only on 6.8.2010 and 3.9.2010 respectively. Therefore, there was no such UPSI at the said Board Meeting of 27.7.2010.

12.5.4. From the said Minutes of the Board meeting of KBL held on 27.7.2010, it is noted that at that time, write off of the loans and advances to KCEL as a capital loss, was not even one of the options contemplated.

12.6. With regard to non-disclosure of KBL's performance / financials in the KIL Board meeting dated 28.7.2010, it is submitted that the performance / financials was not poor / deteriorating. At the Board Meeting of KIL on 28.7.2010, 4 out of 5 directors who attended were aware of the allegedly deteriorating financial position of KBL and that the October 06, 2010 transaction is an *inter-se* promoter transaction.

12.7. As on 28.7.2010 wherein it was resolved to acquire KBL shares from the Selling Promoters and 6.10.2010 when trade was executed, there was no such UPSI.

12.8. The financial results of KBL of the quarter ended July-September 2010 could only be available after September 2010. Therefore, there was no such UPSI in his possession on or before the 28.7.2010 Board meeting of KIL.

12.9. The KIL Board resolution of 28.7.2010 authorized the purchase of the KBL shares at the ruling market prices. It is not even alleged that the sale was at higher than the then ruling market prices. Therefore, it is incorrect to allege that the sale was at "better valuation", or that the same was at the cost of the minority shareholders.

12.10. It is submitted that KIL is in fact only as good as an investment company which has traditionally deployed surplus funds to acquire and hold shares of other Kirloskar group companies. Even prior to the October 06, 2010 Transaction, KIL had from time to time bought shares of other Kirloskar group companies. Prior to the impugned transaction, KIL was already holding 10.42% of KBL shares. The impugned transaction was only intended to consolidate the promoter holdings into the umbrella holding by KIL, which in turn is owned and controlled by the Selling

`

Promoters. Since investment in group companies was one of the main objects of KIL, the said transaction can never be said to be at all fraudulent in any manner.

12.11. The Chairman (Mr. Atul Kirloskar) at the Board meeting of KIL dated July 28, 2010 had *inter alia* proposed the purchase of the shares of KBL and stated that *"... looking at the profitability and growth of KBL, it is expected to achieve good returns from such investments..."*. However, the same was stated by him in the context of such investments being *"long term investments"*, for KIL. The said acquired Shares have not been sold by KIL to date.

12.12. A.N.Alawani was an independent director of KBL from 2005 till 2013 and was not in active or day to day management of KBL.

12.13. The chronology of events listed in the SCNs are all subsequent to the July 28, 2010 Board meeting of KIL at which it was resolved to buy the KBL shares.. Therefore, all the said events are irrelevant to the allegation of insider trading. Without prejudice to the aforesaid, the KG-MOB reports for July 2010 and August 2010 do not show any dramatic change in any parameters / information / projection. As regards all the other events mentioned, the same are after 6.10.2010.

12.14. That 4 out of 5 directors who participated in the meeting of KIL were directors in KBL and even the promoters were common. Therefore, one can assume that whatever was the knowledge of the directors of KBL was also the knowledge of KIL.

12.15. A.N.Alawani did not receive a copy of the viability report before the meeting of the board of directors of KBL held on 3.09.2010.

12.16. He did receive KG-MOB reports issued by KBL and he routinely used to examine the financial performance of KBL in the capacity as a director of KBL. A correct analysis of the KG-MOB reports actually suggested a consistent financial performance of KBL and as far as he recollect, there was no material, at that time to have suggested a weak, poor or deteriorating financial performance of KBL. Accordingly, he believed that investment by KIL in the shares of KBL was in the best interest of KIL and he accordingly voted in favour of such a decision.

12.17. The alleged "Capital Loss of the investment" would have occurred only if there had been a sale of KCEL, which never happened. Therefore, no such UPSI ever existed.

12.18. The SCN have incorrectly assumed that if KCEL was sold for about Rs. 65 crores as referred to the board meeting of KBL held on 3rd September 2010, then the same would have amounted to a Capital Loss of the investment. The Note allegedly attached to the Agenda of the 8th March 2010 meeting mentioned that the acquisition cost of KCEL was Rs. 60 crores. Therefore, in fact there could well have been a capital gain and not a loss.

12.19. If on 26th April 2011, the Board of KBL had not resolved to write off the outstanding loans of KCEL of about Rs. 67.47 crores, the same would have remained in the accounts as a mere book entry.

`

12.20. The advances given to KCEL have no impact on the consolidated balance sheet of KBL. KCEL being a 100% subsidiary of KBL and KCEL's balance sheet was consolidated with KBL for the purpose of reporting. When KBL wrote off advances given to KCEL in its books, KCEL also wrote back similar amount in its books. In consolidated accounts of KBL both these write off and write back gets neutralised and there is zero impact on the profit and loss account of the consolidated entity.

12.21. **INDUCEMENT:**

12.21.1. In KIL board meeting dated July 28, 2010, Noticee No. 9 was not the person who proposed the transaction held on October 06, 2010. Almost all the Board members of the KIL Board approved the transaction executed on October 06, 2010. It is therefore untenable to allege that Noticee No. 9 "induced" KIL to deal in the securities of KBL.

12.21.2. It was the collective wisdom of the Board of Directors of KIL at the said 28.7.2010 Board meeting to buy KBL shares from the Selling Promoters and such a decision was on behalf of KIL. No question can arise of "inducing" anyone, since "inducing" necessarily required 2 parties – 1 who induces and 1 who is induced to buy. One cannot "induce" oneself.

12.21.3. Noticee No. 9 as a director of KIL, when the said resolution was passed on July 28, 2010 has acted for KIL as the buyer of the shares. Therefore, no question arises ofhim having "induced" himself.

12.21.4. The Noticee No. 1 to 6 was not the "utmost beneficiary" because they sold the shares of KBL at the market rate of the date of sale. They could have equally well sold the shares in the market.

12.21.5. There was parity of information between the KIL and the Noticees regarding KBL's financial position and hence, the test qua inducement has not been met. Therefore, the four directors did not induced KIL to purchase KBL shares. Reliance is placed in the Supreme Court decision in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* [(2017) 15 SCC 1].

12.22. Noticee No. 9 had placed reliance on the report of High-Level Committee to review the PIT Regulations, 1992, which inter alia set out what ought to be considered as valid defences to a charge of Insider Trading.

12.23. The SCN does not even allege that the Noticee No.9 dealt in the said shares "on the basis of " any UPSI. In fact, it is alleged that the UPSI is negative, yet the Noticee is alleged to have dealt in the shares by voting to buy the same, which is the exact opposite of what would have been the trade if he had traded "on the basis of" the alleged UPSI. The same proves that the Noticee did not carry out any trade "on the basis of" and alleged UPSI. Therefore, no penalty can therefore be levied against the Noticee under Section 15G of the SEBI Act, 1992.

12.24. Reliance is placed in the case of *Mrs. Chandrakala vs Adjudicating Officer SEBI (SAT Appeal No. 209 of 2011, decided on 31.1.2012, relevant para 7) wherein* it was

held that the prohibition contained in Regulation 3 of the PIT Regulations applies only when the insider has traded "on the basis of" any UPSI.

12.25. Reliance is also placed in the case of *Manoj Gaur vs SEBI (2012 SCC Online SAT 176)*, wherein the Hon'ble SAT quashed and set aside the Order of SEBI since the trading pattern in that case reflected that the trades could not be said to be "on the basis of" the alleged UPSI.

12.26. Neither the SCN-3 nor SSCN-3 alleges that he had made any profit out of the October 06, 2010 transaction. Therefore no penalty can be levied under Section 15HA of the SEBI Act.

12.27. In any event, the criteria set out in Section 15J of the SEBI Act ought to be considered.

13. Noitcee No. 8 vide letters dated August 13, 2020, August 28, 2020, September 12, 2020 had made his submissions in the matter which in brief are as under:

13.1. There has been an inordinate delay in issuance of the SCN. The alleged violations have occurred in the year 2010. SEBI issued the SCN in December, 2019 i.e. after a span of almost 10 years. Reliance is placed in decision of the Hon'ble SAT in the matter of Ashok Shivlal Rupani v. SEBI (Appeal No. 417 of 2018).

13.2. All the relevant documents are not furnished to the Noticee No. 8.

13.3. SEBI issued a supplementary SCN dated July 24, 2020 thereby improving upon the SCN.

13.4. The SEBI (Procedure for Holding Inquiry and imposing Penalties by Adjudicating Officer) Rules, 1995 provide that where any person has committed any contravention, the Adjudicating Officer shall issue a notice to such person requiring him to show cause as to why an inquiry should not be held against him. Such issuance of notice at that stage is not for the purpose of making any adjudication into the alleged violation but is only for the purpose of deciding whether an inquiry should be held against him or not. If a response is made by person concerned against a notice, then the Adjudicating Officer is required to consider the response and form an opinion as to whether an inquiry is required to be held into the allegations of the contravention of the provisions of the Act, Rules or Regulations. It is only then that substantial inquiry into allegations of contravention begins. It is submitted that no such notice has been given to the Noticee No. 8 before conducting any inquiry and there has been a blatant violation of the principles of natural justice.

13.5. There is an allegation that six individual promoters together with the Noticee No.8 committed a fraud and Noticee had requested to disclose the details of Show Cause Notice issued to the other six individual promoters.

13.6. The Noticee No. 8 became the CFO of KBL in 2002 worked as such until June 9, 2010. Thereafter, he was deputed to be the Managing Directors of KCEL from 2010 onwardand continues to be its director. Noticee was also the Non-Executive Director

`

of KIL from 2010 to 2014 and resigned thereafter. These facts do not point to the assumption that he was aware of the fact of alleged financial weakness.

13.7. Post June 9, 2010, Noticee No.8 was not involved in the day to day affairs of the KBL and his nexus with KBL was limited to drawing of the salary, since he was deputed to KCEL. As soon as he demitted office in KBL, a new CFO was appointed in KBL.

13.8. The Show Cause Notice does not contain any allegation of insider trading against the Noticee No.8.

13.9. Noticee No.8 was not part of the KBL's Board Meeting dated July 27, 2010. However, he was part of KIL's Board Meeting dated 28th July 2010. Thus, the Noticee No.8 had no knowledge of what had transpired in the KBL's Board Meeting on the previous day.

13.10. Submission on Board meeting of KIL dated July 28, 2010:

13.10.1. As an ex-employee of KBL, Noticee No.8 did not have knowledge of purported weak financial condition of KBL. Mr. A N Alawani, the audit committee chairman of KIL, asked him to chair the particular agenda item at the board meeting and he went by the representations made by Mr. Atul Kirloskar, Chairman of KIL that KBL was a good investment. Mr. Alawani himself being a Board member of KBL, did not disclose anything at the board meeting. None of the interested parties / interested Directors had disclosed the purported financial weakness of KBL.

13.10.2. In the absence of any specific disclosures the resolution was adopted to invest in KBL by buying shares from selling promoters.

13.10.3. The proposal to acquire the shares held in KBL by the promoters by KIL was made by the Chairman Mr. Atul Kirloskar. Therefore, Noticee No.8 could not have induced KIL, when the chairman of the board himself had the knowledge and intention to acquire shares of KBL from the promoters.

13.10.4. Noticee No. 8 had no knowledge about the underlying object and motive of the promoters to transfer shares held in KBL to KIL.

13.10.5. The Noticee No. 8 had only made a technical observation as to whether the proposed investment was in compliance with Section 372A of the Companies Act.

13.10.6. Therefore, the allegation that the Noticee No. 8 induced KIL to buy the shares of KBL is incorrect. Hence, the Noticee had not committed any fraud.

13.11. It is submitted that there is no fraud, if permissible by law, and there is no breach of that law. In this connection, reliance is placed on the judgment of the Hon'ble Supreme Court in *S.P. Chengalvaraya Naidu V. Jagannath* [(1994) 1 SCC 1]. It is settled law that if the law permits a particular thing to be done in a particular manner, then if such a thing is done in that manner, the same cannot be fraudulent. In the present case, Section 372A of the Companies Act, 1956 permits the company to use 60% of its paid capital and free reserves or 100% of its free reserves, whichever is

more, to acquire the shares of any other body corporate. There is no allegation that KIL acquired the shares in breach of Section 372A of the Companies Act, 1956. What is permissible by law cannot therefore, be a device, scheme or artifice which is fraudulent within the meaning of Regulation 2(1)(c) of PFUTP Regulations, 2003.

13.12. That mere fact that he was part of a collective decision making by the Board and that his opinion, if any, was only a minority opinion if others do not concur with the same, it cannot be called an inducement. Further, the decision of the Board to buy the shares of the KBL cannot be termed as an inducement to the Company. The Board and the Company are inseparable and decision of the Board is the decision of the Company. Therefore, to say that Board induced the Company to do or not to do something is legally unsustainable. With regard to the charge of inducement reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of *Kalya Singh V. Gendalal* [(1976) SCC 3041].

13.13. The Noticee No. 8 is not the selling promoter and he had not defrauded anybody.

13.14. The Noticee No. 8 was not aware of financial performance of KBL after his retirement from the Company. He also was not aware of the impact of the writing off of the loans to KCEL nor was he party to the decision

13.15. The interim monthly financial information of KBL for the months of July, August and September, 2010 was made available to KG MOB (of which Noticee No.8 is not a party) on August 6, 2010, September 3, 2010 and October 28, 2010, all of which were after Noticee No.8 was no longer part of KBL.

13.16. As per all the SCNs, the events which resulted in the alleged contraventions occurred between July-October, 2010 by which time Noticee No.8 had ceased to be an employee (not a Director) of KBL.

13.17. The allegation of fraud on public shareholders i.e. minority shareholders is not only unsubstantiated, but also devoid of merits, since there is nothing on record to show that the share price of KIL was adversely impacted after the July 28, 2010 decision by KIL to acquire the KBL shares, or after the decision by KBL to write off the investment in KCEL.

13.18. There is no allegation of personal gain or advantage to Noticee No. 8.

13.19. Further, upon a cumulative consideration of the events which took place between July 2010 to September 2010, which includes Noticee No.8's participating in the Board Meeting held on July 28, 2010 can be incriminating, if and only if, it can be imputed that sensitive information which was allegedly known to the then promoters, was also known to Noticee No. 8, which is not the case in the present matter.

13.20. The charge of alleged violation of PFUTP is contingent upon violation of PIT Regulations and no such allegation of violation of PIT Regulation has been made against him..

13.21. In view of the above submissions, the Noticee No.8 is not liable for any directions under sections 11 and 11B or penalty under Sections 15HA of SEBI Act, 1992.

`

HEARING on the SCN-1, SCN-2 and SCN-3:

14. In the interest of natural justice, vide notices of hearing dated June 30, 2020 an opportunity of personal hearing was granted to Noticee No. 1 to 5, LRs of Noticee No.6, Noticee No. 7, 8 & 9 on July 22, 2020 through video conference via WEBEX link. The said hearing notice dated June 30, 2020 was sent to the Noticees through email and the same was delivered.

15. Subsequent to the issuance of Notice of hearing dated June 30, 2020, Noticee No. 8 had filed an Appeal No. 150 of 2020 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT")** thereby praying for directions to be issued to SEBI to provide the Investigation Report and the SCN issued to the other directors and promoters. However, it is noted that the Hon'ble SAT dismissed the appeal vide its order dated July 17, 2020 stating that

> *"……. the Appellant should take all grounds which are available to him while filing his reply, including the ground of non-supply of essential documents. Such grounds taken and raised at the time of hearing will be duly considered by the authority. We are further of the opinion that if the authority while passing the final order relies on any document which was not supplied, in which case, it would be open to the Appellant to challenge that finding by filing an appeal and taking it as a ground with regard to non-supply of an essential document. ……..We find that the Respondent issued an email dated 30th June, 2020 intimating the Appellant to file a reply to the show cause notice by 14th July, 2020 and further intimating that 22nd July, 2020 has been fixed for hearing. While reserving the judgment we had directed the Respondent not to proceed in the matter till the delivery of the judgment. Thus, while dismissing the present appeal we grant further opportunity to the Appellant to file a reply to the show cause notice on or before 15th August, 2020. If a reply is filed the Respondent shall intimate a date for hearing to the appellant and conduct the hearing either through physical hearing or through video conference as convenient to the parties….."*

16. In view of the Hon'ble SAT order, hearing in respect to qua Noticee No. 8 is adjourned and same was communicated to Noticee No. 8 by SEBI vide email dated July 21, 2020. Further, in the interest of natural justice, vide notice of hearing dated July 31, 2020 an

`

opportunity of personal hearing was granted to Noticee No. 8 on August 18, 2020 through video conference via WEBEX link. The said notice of hearing was sent to the Noticee no.8 through email and the same was delivered.

17. On July 22, 2020, Mr. Darius Khambata, Senior Advocate, Mr. Tushar Ajinkya, Advocate, Mr. Pheroze Mehta, Advocate, Authorized Representative (hereinafter referred to as **"AR"**) on behalf of Noticee No. 1 to 5, LRs of Noticee No.6 and Noticee No. 7 had appeared through video conference via WEBEX link and made oral submissions. The matter was heard at length. The AR made the oral submissions in line of reply dated July 14, 2020 made by Noticee No. 1 to 5 & 7 and reply dated December 31, 2019 made by LRs of Noticee No.6. AR is advised to submit additional written submission, if any, by August 05, 2020.

18. On July 22, 2020, Mr. Pesi Modi, Senior Advocate, Mr. Kunal Katariya, Advocate, Ms. Sukanya Sehgal, Advocate Authorized Representative on behalf of Noticee No. 9 had appeared through video conference via WEBEX link and made oral submissions. The matter was heard at length. The AR of Noticee No. 9 adopted the arguments made by the AR of Noticee No. 1 to 5, 7 and LRs of Noticee No.6 on common issues as part of his submissions. The AR made the oral submissions in line of reply dated July 14, 2020 made by Noticee No. 9. AR is advised to submit additional written submission, if any, by August 05, 2020.

19. On August 18, 2020, Mr. Vikram Nankani, Senior Advocate, Mr. KRCV Seshachalam from Visesha Law and Ms. Sabeena Mahadik from Visesha Law, Advocate, Authorized Representative on behalf of Noticee No. 8 had appeared through video conference via WEBEX link and made oral submissions. The matter was heard at length. The AR made the oral submissions in line of reply dated August 13, 2020 made by Noticee No. 8. AR requested the copy of SCN issued to A.N. Alawani, Alpana R. Kirloskar, Arti Atul Kirloskar, Jyotsna Gautam Kulkarni, Rahul Chandrakant Kirloskar, Atul Chandrakant Kirloskar and Gautam Achyut Kulkarni (since deceased). AR is advised to submit additional written submission, if any, by August 21, 2020.

`

Hearing on Supplementary SCNs:

20. Subsequent to the hearing held on July 22, 2020, SEBI issued Supplementary Show Cause Notices dated July 24, 2020 to Noticee No. 1 to 5, 7, 8 & 9 mentioning therein specific penalty section under SEBI Act for the alleged violation of provisions of PIT Regulations, 1992 and PFUTP Regulations by Noticee No. 1 to 5 & 9 and for the alleged violations of provisions of PFUTP Regulations by Noticee No. 7 & 8. Noticee No. 1 to 5, 7 & 9 vide their respective written submissions had also made their submission to Supplementary Show Cause Notices dated July 24, 2020 and requested for opportunity of personal hearing. Therefore, in the interest of natural justice, vide email dated September 02, 2020 an opportunity of personal hearing was granted to Noticee No. 1 to 5, 7 & 9 on September 08, 2020 through video conference via WEBEX link. Vide said email Noticee No. 1 to 5, 7 & 9 were informed that the hearing is limited in respect to SSCN dated July 24, 2010. In reply, Noticee No. 1 to 5, 7 & 9 vide email dated September 04, 2020 had requested for adjournment of hearing for period of 4 weeks. Acceding to their request partially, the hearing was adjourned to September 14, 2020 through video conference via WEBEX link. The same was communicated to Noticee No. 1 to 5, 7 & 9, vide email dated September 04, 2020.

21. On September 14, 2020, Mr. Darius Khambata, Senior Advocate, Mr. Tushar Ajinkya, Advocate, Mr. Pheroze Mehta, Advocate, Authorized Representative (hereinafter referred to as **"AR"**) on behalf of Noticee No. 1 to 5 & 7 had appeared through video conference via WEBEX link and made oral submissions. The matter was heard at length. The AR reiterated their earlier submissions made in the matter. AR made the oral submissions in line of submissions dated September 14, 2020. AR was advised to submit additional written submission, if any, by September 18, 2020.

22. On September 14, 2020, Mr. Pesi Modi, Senior Advocate, Mr. Kunal Katariya, Advocate, Ms. Sukanya Sehgal, Advocate Authorized Representative on behalf of Noticee No. 9 had appeared through video conference via WEBEX link and made oral submissions. The matter was heard at length. The AR of Noticee No. 9 adopted the arguments made by the AR of Noticee No. 1 to 5 & 7 on common issues as part of his submissions. The AR reiterated their earlier submissions made in the matter. The AR made the oral submissions

`

in line of reply dated September 14, 2020 made by Noticee No. 9. AR was advised to submit additional written submission, if any, by September 18, 2020.

23. SEBI vide email dated September 02, 2020 had provided the copy of SCNs, SSCNs issued to A.N. Alawani, Alpana R. Kirloskar, Arti Atul Kirloskar, Jyotsna Gautam Kulkarni, Rahul Chandrakant Kirloskar, Atul Chandrakant Kirloskar and Gautam Achyut Kulkarni (since deceased) alongwith copy of all annexure attached therein to Noticee No. 8. In the interest of natural justice, vide email dated September 02, 2020 an opportunity of personal hearing was granted to Noticee No. 8 on September 08, 2020 through video conference via WEBEX link. Vide said email Noticee No. 8 were informed that the hearing scheduled on September 08, 2020 is limited with respect to the submissions made / to be made in regard to the said documents provided. In reply, Noticee No. 8 vide email dated September 03, 2020 had requested the copy of replies submitted by A.N. Alawani, Alpana R. Kirloskar, Arti Atul Kirloskar, Jyotsna Gautam Kulkarni, Rahul Chandrakant Kirloskar, Atul Chandrakant Kirloskar and Gautam Achyut Kulkarni (since deceased) in respect of their respective SCNs and SSCNs and also requested to adjournment of hearing. From the document available on records, I note that the said request of Noticee No. 8 has been rejected on the ground that the said documents were not relied upon in issuances to the SCNs and SSCNs to the Noticees and consequently, the request of adjournment was also rejected. The same was communicated to Noticee No. 8 vide email dated September 03, 2020. The AR of Noticee No. 8 vide email dated September 04, 2020 requested to adjourned the hearing to September 11, 2020 due to non-availability of senior advocate on September 08, 2020. Acceding to the request, the hearing in respect of A.R. Sathe is adjourned to September 11, 2020 through video conference via WEBEX link. The same was communicated to Noticee No. 8 vide email dated September 04, 2020.

24. On September 11, 2020, Mr. Vikram Nankani, Senior Advocate, and Ms. Sabeena Mahadik from Visesha Law, Advocate, Authorized Representative (AR) on behalf of Noticee No. 8 had appeared through video conference via WEBEX link and made oral submissions. The matter was heard at length. The AR reiterated their earlier submissions made in the matter. The AR made the oral submissions on behalf of Noticee No. 8 in respect of documents provided to Noticee No. 8. AR requested that the written submission

`

of the today's oral submission will be submitted by September 14, 2020. Acceding to request, AR was advised to submit written submission by September 14, 2020.

FINDINGS AND CONSIDERATION:

25. I have perused the SCNs, replies, written submissions and other materials available on record. On perusal of the same, the following issues arise for consideration. Each issue is dealt with separately under different headings:

25.1. ***Whether Noticee No. 1 to 6 and Noticee No. 9 (on behalf of KIL) had traded in the shares of KBL while in possession of and / or on the basis of UPSI and thereby violated the provisions Section 12A(d) and (e) of SEBI Act, 1992 and provisions of Regulation 3(i) read with Regulation 2(ha) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 as alleged in the respective SCNs?***

25.2. ***Whether Noticee No. 5, 7, 8 & 9 together with Noticee No. 1 to 6 had committed fraud on KIL and public shareholders (i.e. minority shareholders) of KIL and thereby violated the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) PFUTP Regulations as alleged in the respective SCNs?***

25.3. ***Whether Noticee No. 1, 3 and 4 had violated clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of PIT Regulations 1992 as alleged in the respective SCNs?***

25.4. ***Whether proceedings for disgorgement of unlawful gains / loss avoided by Noticee No. 6 while trading in the shares of KBL can be initiated against LRs of Noticee No. 6 under Section 28B read with sections 11(1) and 11B(1) of SEBI Act, 1992?***

25.5. ***If issue No. 1, 2, 3 & 4 are determined in affirmative in full or in part, then what directions including disgorgement under Sections 11(1), 11(4), 11B(1) of SEBI Act, 1992 and / or monetary penalty under Sections 15G, 15HA and 15HB of SEBI Act, 1992 should be issued / imposed against the respective Noticees / LRs of Noticee No. 6 for their respective violations?***

`

Common Preliminary Objection:

26. Before moving forward in the matter on merit, I first discuss common preliminary objections raised by the Noticees:

26.1. **Inspection of documents :**

26.1.1. Noticees have submitted that several documents that were referred to or otherwise attached to SCNs were incomplete or not provided, including investigation report, Minutes of Board meeting of KBL dated March 08, 2010 and Loan ledgers of KBL and / or KCEL and that despite their repeated requests, a complete set of documents have not been provided to them. They further submitted that all the documents are required for providing an appropriate response to the SCNs.

26.1.2. In this regard, it is noted from the records, that all the material / evidences based on which the charges in the SCNs have been levelled on the Noticees were enclosed along with the SCNs as annexures. It is also noted that SEBI had granted an opportunity of inspection of all relied upon documents to the Noticee no. 8. Further, it is noted that upon request of Noticees, the copies of relied upon documents were also provided to the all the Noticees by SEBI through various letters addressed to them. The details of said letters issued to Noticees and inspection of documents granted to Noticee No. 8 are mentioned at paragraph 9 above. Thus, no prejudice has been caused to the Noticees on account of the same.

26.1.3. Further, reliance is also placed on the Hon'ble Supreme Court order dated October 05, 2010 passed in the matter of *Kanwar Natwar Singh vs Directorate of Enforcement & Anr* (MANU/SC/0795/2010) and order of Hon'ble SAT dated February 12, 2020 in Shruti Vora vs. SEBI wherein it was held that the requirement is to supply the documents relied upon while serving the show cause notice.

26.1.4. It is also noted that in the present matter Noticee No. 8 (Mr. A.R. Sathe) had filed an Appeal No. 150 of 2020 before the Hon'ble SAT. The Hon'ble SAT dismissed the appeal vide its order dated July 17, 2020 for the reasons mentioned therein.

`

26.1.5. In view of the above facts, circumstances and observations of Hon'ble Supreme Court and Hon'ble SAT, I am of view that the contention of the Noticees that several documents that were referred to or otherwise attached to SCNs were incomplete or not provided is untenable. At this point, I also find it important to reiterate that all the documents, which formed the basis of the allegations leveled in the SCNs, were provided to the Noticees along with the SCNs and through various letters issued by SEBI. The requirement of giving documents such as Minutes of Board meeting of KBL dated March 08, 2010 and Loan ledgers of KBL and / or KCEL does not arise as they were not relied upon in the SCNs. Therefore, there is no justifiable right to seek documents which were not relied upon.

26.2. **Inordinate Delay in Issuance of SCNs:**

26.2.1. As regards the arguments based on delay, I note that under Section 11C of SEBI Act, ***at any time,*** SEBI is empowered to investigate the transactions in securities which are being dealt with, in a manner detrimental to the investors or the securities market; or any intermediary or any person associated with the securities market that has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder**.** Hence, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. Thus, I am of the view that SEBI Act has not prescribed any limitation period on SEBI to initiate or conclude investigation. Further, I also note that there is no provision in SEBI Act or PIT Regulations, 1992 or PFUTP Regulations which lays down any limitation period for action under it.

26.2.2. It is noteworthy that as a generally accepted principle regarding enforcement action by any enforcement authority, investigation / inquiry against any subject entity and the consequent action in pursuance of the same should be completed in a reasonable time frame which would serve the objective of balancing the rights of the persons subjected to enforcement action and the investors whose rights are being protected though enforcement proceedings. However, it is equally true that the time consumption in investigation or consequent

`

enforcement actions can be caused due to multiplicity of factors such as the violation coming to the notice of the enforcement authority on a later date, the requisite data / material not being readily available, non-cooperation by the subject entities, pendency of connected matters before other courts / authorities, etc.

26.2.3. In the present case, it would not be out of context to mention that consumption of time was caused on account of numerous reasons including that prima facie sufficient material / evidence was not available with SEBI to initiate detailed investigation in the year 2012 and possible violation of insider trading by the promoters/directors of KBL came to SEBI's notice on a later date i.e. in the year 2016. From the documents available on record, I find that during preliminary examination, vide letters dated April 27, 2012 to KBL and July 04, 2012 to KIL, SEBI had sought certain information w.r.t the transaction dated October 06, 2010 between promoter / director of KBL and KIL. In response to it, KBL vide letter dated May 10, 2012 and KIL vide letter dated July 09, 2012 had submitted their reply.

26.2.4. Upon perusal of SEBI letter dated April 27, 2012 and KBL letter dated May 10, 2012, I find that SEBI had asked KBL to provide the details of persons who were in possession of the information regarding financial results of KBL declared on October 28, 2010. In response to it, KBL vide letter dated May 10, 2012 stated that *"…Apart from CFO and Company Secretary and the concerned members of their teams, respectively and Auditors of the Company, financial information, is not shared and made available even to any of the other insiders including the Directors…".* SEBI considered that KBL had furnished correct and complete information to SEBI i.e. the information regarding financial results of KBL was not shared or made available to any of the other insiders including the Directors. Further, KIL letter dated July 09, 2012 in response to SEBI letter had inter alia stated that *"…the investment in the share of Kirloskar Brothers Limited (KBL) by way of acquisition of shares from some of the promoters of the Company (KIL) was made only after the approval of the Board of the Company (KIL)…"* Thus, on the basis of information provided by KBL and KIL coupled with transaction details available with SEBI, it was considered,

`

in 2012 that sufficient prima facie information / evidence was not available with SEBI to warrant detailed investigation in the matter.

26.2.5. However, in the year 2016, KBL vide letter dated April 27, 2016 had informed SEBI that reply given by KBL vide letter in May 10, 2012 in response to SEBI letter dated April 27, 2012 needs to be revised. Accordingly, KBL vide letter dated April 27, 2016 submitted revised response to SEBI letter dated April 27, 2012 inter alia stating that *"……financial information of the company is shared and made available only to those persons who are the promoters, Directors, Chief Financial Officer, Auditors Company Secretary of the company and the concerned members of the teams, respectively, and the Auditors of the Company."*

26.2.6. Thus, in year 2016, upon receipt of the additional new information from KBL i.e. that financial information of KBL is shared with the Promoters and Directors of KBL, coupled with the fact that on October 06, 2010 promoters/directors of KBL and KIL (Promoter of KBL) had entered into the purchase / sale transactions in the shares of KBL and KBL financial results were disclosed to Exchanges on October 28, 2010, SEBI considered that a detailed investigation in the matter is required, to ascertain any possible violations of insider trading by the promoters/directors of KBL.

26.2.7. Hence, considering the facts and circumstance of the case, I am of the view that the possible violation of the provisions of SEBI Act and rules and regulations made there under including the PIT Regulations, 1992 and PFUTP Regulations by the promoters/directors of KBL came to the knowledge of SEBI only in the year 2016. Thereafter, SEBI had started a detailed investigation in the matter. Further, I note that insider trading under PIT Regulations, 1992 and fraud under PFUTP Regulations involves complex issues and detailed fact findings is required in order to identify/determine such violations. From the documents available on record, I find that from May 2016 onwards, SEBI had sought various information from Noticees, KBL, KIL etc. and various correspondence / communication were exchanged between SEBI and Noticees, KBL, KIL etc. till 2019. I also note that from time to time Noticees, KBL and KIL had furnished data / information sought by SEBI. I also note that detailed fact finding, collection of information / documents/ evidence and analysis / examination of

such data / information takes times. From the documents available on record, I note that investigation report in the matter was approved in December 2019 and SCNs were issued to the Noticees in December 2019.

26.2.8. Thus, in view of the forgoing, I am of the view that from the date (April 27, 2016) of coming to the knowledge to SEBI regarding possible violations of insider trading by the promoter / directors of KBL till the date (December 03, 2019) of approval of investigation report in the matter and issuance of SCNs on December 10, 11, 12, 2019, SEBI had completed investigation and initiated enforcement actions and had exercised its power within a reasonable period of time.

26.2.9. Further, I also note that Noticees has placed reliance in the matter of *Ashlesh Gunvantbhai Shah vs Securities and* Exchange *Board of India* passed by Hon'ble SAT vide order dated January 31, 2020. Upon perusal of the said order, I note that in the said matter the transactions has been taken place in the year 2010, SEBI had initiated investigation in the matter in the August 2011 and investigation report was approved in February 2016 and SCN was issued in the July 2017. Therefore, Hon'ble SAT held there was a delay of 7 years in issuance of SCNs and the power to adjudicate has not been exercised within a reasonable period. I note that facts and circumstance in the present case are different from the matter of *Ashlesh Gunvantbhai Shah* as explained in above, particularly considering that reasonable information regarding possible violation of insider trading by the promoters /directors of KBL of transactions held in 2010 had came to the knowledge of SEBI in year 2016 and SEBI had initiated a detailed investigation in the matter from 2016 onwards, investigation report was approved in December 2019 and SCNs issued in December 2019. Hence, in my considered view, the same is within a reasonable period of time.

26.2.10. Further, from the documents available on record, I find that during the course of investigation from 2016 to 2019, SEBI had sought various information / documents from Noticees, KBL and KIL through various letters / emails. The Noticees through various emails / letter / correspondence had provided those information / documents. I note asking information / documents and collection of evidence etc. multiple times from various entities including Noticees under Section 11 of SEBI Act, 1992 is a part of investigation process. Thus, I am of

`

the view that Noticees belief that after providing relevant information / documents multiple times to SEBI, the investigation is complete and closed without receiving any specific communication from SEBI in that regard is misconceived and untenable.

26.2.11. What is important is whether the delay, if any, has caused prejudice to the Noticees. The factum of delay in completion of investigation and / or initiation of enforcement proceedings, in itself, cannot be a ground for withdrawal of proceedings. At this point, it is important to mention that no case been made out by the said Noticees that any prejudice was caused to them on account of the time consumption in initiation of investigation / enforcement proceedings in the present matter. In this context, I find it relevant to refer to the order passed by Hon'ble SAT in the case of *Metex Marketing Pvt. Ltd. vs. SEBI* (order dated June 4, 2019) wherein Hon'ble SAT held that: *"This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."* In view of the above, I find that no prejudice has been caused to the Noticees. Hence, I do not find any merit in the said submission of the Noticees.

26.3. **Motivated SCNs and SCNs disregard complaints made by Noticees:**

26.3.1. Noticees submitted that SCNs are motivated by and exclusively based on complaints from Mr. Sanjay Kirloskar whereas complaints made by Noticee No. 4 and Noticee No. 5 jointly and separately vide their letters dated November 22, 2018, December 6, 2018 and December 21, 2018 to SEBI have been ignored by SEBI and not acted upon. Further, Noticees submitted that on October 14, 2010 i.e. a few days after the 2010 Transaction, Mrs. Pratima Kirloskar, the wife of Mr. Sanjay Kirloskar, herself sold shares held by her in KBL. However, no Show Cause Notice has been issued to her in respect of that transaction.

26.3.2. I note that under the present investigation, SEBI had also initiated enforcement action and issued SCNs against Sanjay Kirloskar (Trustee of Kirloskar Brothers Limited, Employees Welfare Trust Scheme), Pratima Sanjay Kirloskar, Parkar

`

Investments Private Limited and Karad Projects and Motors Limited for the alleged violation of insider trading for the transaction dated October 14, 2010. Thus, submissions of Noticees that SCNs issued by SEBI are motivated by the complaints of Mr. Sanjay Kirloskar and the complaints of Noticee No. 4 and Noticee No. 5 were ignored and not acted upon does not hold merit.

26.4. **Supplementary SCNs issued to modify the SCNs and no show-cause notice given qua the nature of action proposed to be taken:**

26.4.1. Noticee No. 1 to 5, 7 and 9 submitted that SEBI has issued the Supplementary SCNs to modify the SCNs and the Supplementary SCNs makes it clear that the SCNs are contrary to the principles of natural justice, as there was no show cause notice given qua the nature of action proposed to be taken. Reliance is also placed to the decision of Hon'ble Supreme Court in the matter of *Gorkha Security Services v. Govt. (NCT of Delhi), [(2014) 9 SCC 105]*. It is also submitted that the SCNs failed to mention the charging / liability provisions for penalty and therefore, SCNs are in violation of principles of natural justice as there was no show-cause notice given qua the charging / liability provisions qua penalty.

26.4.2. In this regard, I note that vide SCN-1 dated December 10, 2019, Noticee No. 1 to 5 has been called upon to show cause as to why appropriate penalty and directions including disgorgement under Sections 11(1), 11(4), 11B(1), 11B(2) and 11(4A) of the SEBI Act, 1992 should not be issued against Noticee No. 1 to 5 for the violations as alleged in the SCN-1. Vide SCN-2, dated December 11, 2019, Noticee No. 7 has been called upon to show cause as to why appropriate penalty and directions under Sections 11(1), 11(4), 11B(1), 11B(2) and 11(4A) of the SEBI Act, 1992 should not be issued against Noticee No. 7 for the violations as alleged in the SCN-2. Further, vide SCN-3, dated December 12, 2019, Noticee No. 9 has been called upon to show cause as to why appropriate penalty and directions under Sections 11(1), 11(4), 11B(1), 11B(2) and 11(4A) of the SEBI Act, 1992 should not be issued against Noticee No. 9 for the violations as alleged in the SCN-3.

26.4.3. I note that Sections 11B(2) and 11(4A) were inserted vide amendment dated March 08, 2019 to the SEBI Act, 1992 wherein SEBI Board is empowered to

`

levy penalty for violations of specified provisions. I note the Sections 11B(2) and 11(4A) of SEBI Act, 1992, clearly refer to the penal Sections of SEBI Act, 1992 under which Board may levy penalty i.e. charging provisions to levy penalty. The SCNs mention Sections 11B(2) and 11(4A) of SEBI Act, 1992. Upon perusal of Sections 11B(2) and 11(4A) of SEBI Act, 1992 coupled with the violations mentioned in the SCNs, charging section for levy of penalty are Sections 15G, 15HA and 15HB of SEBI Act, 1992 in the present matter. Further, I note, extant of penalty is clearly mentioned under Sections 15G, 15HA and 15HB of SEBI Act, 1992. I also note that Section 15J of SEBI Act, 1992 clearly state that while adjudging the quantum of penalty under Section 11B of SEBI Act, 1992, the Board shall consider the factors mentioned therein. The quantum of penalty cannot be mentioned in the SCN itself as it would amount to prejudgment. Thus, it is incorrect to contend that because the Noticees were unaware of the precise quantum of penalty that may be imposed on them, this was in violation of principles of natural justice.

26.4.4. Furthermore, I note that SEBI, in the interest of Natural Justice, issued Supplementary SCNs dated July 24, 2020 to Noticees, only to specify / clarify charging provisions to levy penalty for the alleged violations mentioned in the SCNs, which has been, in any case already embedded in the SCNs by virtue of provisions of Sections 11B(2) and 11(4A) of SEBI Act, 1992. Thus, I do not find any merit in submissions that SEBI has issued the Supplementary SCNs to modify the SCNs. Further, in any case, no prejudice has been caused to Noticees, as they have filed replies and sought opportunity of hearing on SSCNs, which have been given and availed.

26.4.5. Furthermore, the SCNs issued to the Noticees unequivocally state the provisions under which preventive measures, if any, would be issued. One such provision mentioned in the SCNs is Section 11(4) (b) of SEBI Act, 1992 which states that upon completion of an inquiry, a person can be restrained from accessing the securities market and can also be prohibited from being associated with the securities market. Thus, it is incorrect to contend that the Noticees were unaware of the directions that may be issued against them. Further, the SCN provides for the possible directions including disgorgement and penalty. Thus, case law

`

in *Gorkha Security Services which are based on* is not applicable in the present case.

26.4.6. Thus, in view of above, I do not find merit in the contention of the Noticee No. 1 to 5, 7 and 9 that no show cause notice was given qua the nature of action proposed to be taken.

26.5. **No notice for conducting inquiry under AO Rules has been given:**

26.5.1. Noticee No. 8 submitted that SEBI did not wait for his reply to SCN - 2 and issued a supplementary SCN and scheduled the hearing on August 18, 2020. As per AO Rules, if a reply is made by a person against a notice, then the Adjudicating Officer is required to first consider the reply and form an opinion as to whether an inquiry is required to be held into the allegations of the contravention of the provisions of the Act, Rules or Regulations. It is only then that substantial inquiry into allegations of contravention begins. SEBI should have first considered his reply dated August 13, 2020 and then, if needed, scheduled a hearing. This shows that SEBI has already made up its mind before considering his reply. Further, no such notice has been given to the Noticee No. 8 before conducting any inquiry and thus there has been a violation of the principles of natural justice.

26.5.2. In this regard, I note that vide SCN-2 dated December 11, 2019, Noticee No. 8 has been called upon to show cause as to why an appropriate penalty and directions be not issued against him under Section 11(1), 11(4), 11B(1), 11B(2) and 11(4A) of SEBI Act, 1992. I note that as per Section 11B(2) and 11(4A) of SEBI Act, 1992 the Board, by a reasoned order, is empowered to levy penalty under sections 15G, 15HA and 15HB etc. after holding an inquiry in the *prescribed manner*. As per Section 2(g) of SEBI Act, 1992, "prescribed" means prescribed by rules made under this Act. As per Section 29(2)(da) & (f) of SEBI Act, 1992 the Central Government make rules for carrying out inquiry under sub-section (1) of section 15-I. Further, I note that the central government under Section 29(2)(da) & (f) of SEBI Act, 1992 had made AO rules for holding inquiry for the purpose of imposing penalty under Chapter VI-A of the Act. In view of the above discussion, reference to Section 11B (2) and 11(4A) of SEBI

`

Act, 1992 in the SCN-2 imports the reference to AO Rules. Thus, I am of the view that by virtue of SCN dated December 11, 2019, Noticee No. 8 has been called upon to show cause imposition of monetary penalty as per Section 11B(2) and 11(4A) of SEBI Act, 1992 under the prescribed AO Rules.

26.5.3. In quasi-judicial proceedings, it is to be noted that before conducting any inquiry in the matter, the quasi-judicial authority has to follow the Principles of Natural Justice and the Noticee should not be deprived of the same. In the present matter, I note that Noticee No. 8 did not submit his reply in the matter till June 30, 2020 i.e. a period of 6 months from the date of issuance of SCN-2 and 5 months from the date of completion of inspection of documents. Thus, after considering the documents available on record, in view of failure to file reply by Noticee No. 8 to SCN-2, I am of the view that inquiry in the matter had to be taken forward and accordingly, in the interest of natural justice, an opportunity of hearing was granted to the Noticee No. 8 on July 22, 2020, vide notice of hearing dated June 30, 2020. Therefore, the question of having already making up my mind does not arise.

26.5.4. Further, the SSCN-2 dated July 24, 2020 has been issued to Noticee No.8 in continuation of SCN-2 dated December 11, 2020. Vide said SSCN, it is informed to Noticee No. 8 that the provision under which the liability to pay monetary penalty is proposed, was inadvertently not mentioned in SCN-2 dated December 11, 2019. The said SCNs have to be read with Rule 4(1) of AO Rules. The said SSCN-2 was in the nature of clarification. Thus, I note that SSCN-2 did not make any modification to SCN – 2 and no new cause of action has been added due to SSCN-2. I also note that subsequent to the issuance of SSCN-2, the Noticee No. 8 has been granted an opportunity of hearing on August 18, 2020 and September 11, 2020 of which a notice of hearing was duly served to him. The Noticee No. 8 had availed the said hearings. Thus, no prejudice has been caused to Noticee No. 8 in this regard.

26.5.5. Thus, in view of the above, I note that notice dated June 30, 2020 has been given to the Noticee No. 8 for conducting any inquiry in the matter. Hence, I do not find any merit in the said contention of Noticee No. 8 that no notice has been given to the Noticee No. 8 before conducting any inquiry or that there has been a violation of the principles of natural justice.

`

MERITS

27. I now proceed to deal with the matter on merits. While proceeding to deal with the matter following issues arise for consideration.

Issue No.1 ***Whether Noticee No. 1 to 6 and Noticee No. 9 (on behalf of KIL) had traded in the shares of KBL while in possession of and / or on the basis of UPSI and thereby violated the provisions Section 12A(d) and (e) of SEBI Act, 1992 and provisions of Regulation 3(i) read with Regulation 2(ha) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 as alleged in the respective SCN?***

Sub-Issue No. 1.1: *Whether Noticee No. 1 to 6 and Noticee No. 9 were insiders in terms of Regulation 2(e) of PIT Regulations, 1992?*

Sub-Issue No. 1.2: *Whether the information of capital loss of the investment / advances given to KCEL, wholly owned subsidiary of KBL, was price sensitive information in terms of Regulation 2(ha) of PIT Regulations, 1992 and was unpublished for the period March 8, 2010 to April 26, 2011 in terms of Regulation 2(k) of PIT Regulations, 1992?*

Sub-Issue No. 1.3: *Whether Noticee No. 1 to 6 and Noticee No. 9 were in possession of UPSI-1 when the transaction dated October 06, 2010 happened and thereby traded in the shares of KBL on October 06, 2010 while in possession of UPSI-1?*

Sub-Issue No. 1.4: *Whether Noticee No. 1 to 6 and Noticee No. 9, on October 06, 2010 had traded in the shares of KBL on the basis of UPSI-1?*

Sub-Issue No. 1.5: *Whether information of financial results of KBL for quarter July – September 2010 was price sensitive information in terms of Regulation 2(ha) of PIT Regulations, 1992; and was unpublished for the period August 06, 2010 to October 28, 2010 in terms of Regulation 2(k) of PIT Regulations, 1992; and Whether Noticee No. 1 to 6 and Noticee No. 9 were in possession of said information on October 06, 2010 and thereby traded in the shares of KBL on October 06, 2010 while in possession of and / or on the basis of said information?*

28. I now proceed to deal with the issues as follows:

`

Sub-Issue No. 1.1: *Whether Noticee No. 1 to 6 and Noticee No. 9 were insiders in terms of Regulation 2(e) of PIT Regulations, 1992?*

29. As regards the issue of whether Noticee No. 1 to 6 and Noticee No. 9 were insiders, the same is to be tested as per the definition provided in the PIT Regulations, 1992. The relevant provisions in the PIT Regulations, 1992 read as under:

Regulation 2(e) *"insider" means any person who,*

(i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or

(ii) has received or has had access to such unpublished price sensitive information;

Regulation 2(c)

"connected person" means any person who—

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company

Explanation :—For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading"

Regulation 2(h)(vii) *"person is deemed to be a connected person", if such person is relatives of the connected person.*

Regulation 2(i) *"relative" means a person, as defined in section 6 of the Companies Act, 1956 (1 of 1956)*

30. As per Regulation 2(e) of PIT Regulations, 1992, insider means (1) any person who is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company (2) any person who has received or has had access to such unpublished price sensitive information. As per Regulation 2(c) of PIT Regulations, 1992, "connected person" includes any person who is a "director" of a company, as

`

defined in clause (13) of section 2 of the Companies Act, 1956 and any person who occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have access to unpublished price sensitive information in relation to that company. As per section 2(13) of the Companies Act 1956, a "Director" includes any person occupying the position of director, by whatever name called. As per Regulation 2(h) of PIT Regulations, 1992, "Person is deemed to be connected person" includes person who is a relative of the connected person. As per Section 6 of Companies Act, 1956 relatives include inter alia husband, wife, brother and brother's wife.

31. In the present matter, during the period from March 01, 2010 to April 30, 2011, following connections were noted of Noticee No. 1 to 6 & 9 with KBL:

Table No. 11

Sr. No.	Noticee No.	Name	Designation in KBL	Relation with other Noticee
1	Noticee No. 1	Alpana R. Kirloskar	Promoter	Wife of Rahul (Noticee No. 4)
2	Noticee No. 2	Arti Atul Kirloskar	Promoter	Wife of Atul (Noticee No. 5) i.e. Brother's wife of Rahul (Noticee No. 4)
3	Noticee No. 3	Jyotsna Gautam Kulkarni	Promoter	Wife of Gautam (Notice No. 6)
4	Noticee No. 4	Rahul Chandrakant Kirloskar	Director / Promoter	
5	Noticee No. 5	Atul Chandrakant Kirloskar	Promoter	Brother of Rahul (Noticee No. 4)
6	Noticee No. 6	Gautam Achyut Kulkarni	Director / Promoter	
7	Noticee No. 9	A N Alawani	Non-Executive Independent Director	

32. From the submissions of the Noticees, I note that they have not denied, rather have accepted the aforesaid connection with KBL as well as with other Noticees. Thus, I am of the view that as per Regulation 2(c) and 2(h) of PIT Regulations, 1992, Noticee No. 4, 6

`

& 9 being Directors of KBL are 'connected person' with KBL and Noticee No. 1, 2, 3 & 5 being relatives of Noticee No. 4 & 6 as per the Schedule – IA of Section 6(c) of Companies Act, 1956 and promoters of KBL are 'persons deemed to be connected persons' with KBL. Thus, I am of the view that Noticee No. 1 to 6 and 9, by virtue of their connection with KBL as mentioned in table above, and close relationship of Noticee No. 1, 2, 3 being wives of Noticee No. 4, 5 & 6 respectively are reasonably expected to have access to unpublished price sensitive information in respect of KBL.

33. From the submissions of Noticee No. 1 to 6 and 9, it is noted that none of them have contested / claimed that they were not insiders. Noticee No. 1, 2 & 3 submitted that they don't know the rationale behind selling KBL shares on October 06, 2010 and all the decisions regarding the said sale were taken by their respective husbands. In this regard, I note that even if such trading was initiated by the decision of the husbands, it is also the decision of the Noticee No. 1, 2 & 3 especially when the trading in KBL shares by Noticee No. 1, 2 & 3 were done from their individual trading accounts. I also note the fact that all the disclosures to the exchanges regarding the sale of said KBL shares by Noticee No. 1, 2 & 3 were signed and filed by Noticee No. 1, 2 & 3 themselves.

34. With respect to the wife being an insider and being reasonably expected to have UPSI, Hon'ble SAT in the matter of *Poonam Garg vs SEBI* decided on March 22, 2018 has observed that *".....the appellant is a Promoter/Non- Executive Director of the company and her husband is also a Promoter/ Managing Director/ Compliance Officer of the company is sufficient to hold that the appellant is an 'insider' and was privy/ reasonably privy to the PSI.....In such a case, it is not open to the appellant to feign ignorance about the PSI and take shelter under the violations committed by her husband as Promoter/ Managing Director/ Compliance Officer of the company....."*

35. With regard to the renting of demat / trading account, Hon'ble SAT in the matter of *Mahavirsingh N Chauhan and ANR vs. SEBI* decided on October 18, 2019 has observed that *"We are of the opinion that by renting their demat account, trading account etc., the appellants were concealing the identity of the fraudster and, thus, were acting not only in concert but in connivance with the said fraudster. The appellants cannot, thus, escape from the liability of debarment and the wrongful gains made by them."*

`

36. Hence, in view of the above, I am of the view that Noticee No. 1 to 6 and 9 were insiders in terms of Regulation 2(e) of PIT Regulations, 1992.

Sub-Issue No. 1.2: *Whether the information of capital loss of the investment / advances given to KCEL, wholly owned subsidiary of KBL, was price sensitive information in terms of Regulation 2(ha) of PIT Regulations, 1992 and was unpublished for the period March 8, 2010 to April 26, 2011 in terms of Regulation 2(k) of PIT Regulations, 1992?*

37. In this issue, I proceed to determine whether there was information of capital loss of the investment / advances given to KCEL, wholly owned subsidiary of KBL, (hereinafter referred to as ***"PSI-1"***) as alleged in the SCN. If such information was there, then the question arises whether such information was price sensitive information as alleged in the SCN and when it came into the hands of the insiders, and till when it remained unpublished.

38. The relevant provisions in the PIT Regulations, 1992, in this regard read as under:

> ***Regulation 2(ha)*** *- Price sensitive information means any information which related directly or indirectly to a company and which if published is likely to materially affect the price of the securities of the company.*
> *Explanation – The following shall be deemed to be price sensitive information:-*
> *i. periodical financial results of the company;*
> *……*
> *(vi) disposal of the whole or substantial part of the undertaking;*

39. As per Regulation 2(ha) of PIT Regulations, 1992 "price sensitive information" means any information which relates directly or indirectly to a company and which, if published, is likely to materially affect the price of securities of company. The information relating to periodical financial results, intended declaration of dividend, issuance and buy-back of securities, major expansion plan or execution of new project, amalgamation, merger and takeovers, disposal of whole and substantial part of undertaking or any significant change in policies, plans or operations of the company is generally considered as "price sensitive

`

information" till the time the same is made public. Further, the list given in the explanation is an inclusive list and not an exhaustive one.

40. I note, upon perusal of the agenda of the board meeting of KBL held on March 08, 2010, that a note is attached to the Agenda for the Board Meeting No. 10/2 of KBL dated March 08, 2010. It is noted that though the table of contents of agenda does not have reference to KCEL, however, the Note attached to the agenda has details to consider the performance and strategic options for KCEL. It is noted that during the course of investigation, KBL vide letter dated June 28, 2019 had provided the said Note attached with Agenda for the Board Meeting No. 10/2 of KBL dated March 08, 2010 to SEBI. From the submissions of the Noticees, I noted that they have not denied that such note was attached to the agenda and reliance has been placed only on the existence of the note and not on any discussion thereon. Based on the said note, the facts which were present and known as on March 08, 2010 were as under:

    40.1. KCEL had been making losses for 3 years i.e. loss of Rs. 1.39 crore for FY 2006-07, loss of Rs. 3.77 crore for FY 2007-08, loss of Rs. 11.77 crore for FY 2008-09 and was expected to make an estimated loss of Rs. 16 crore for FY 2009-10 i.e. the operations of KCEL were deteriorating;

    40.2. The contingent liabilities of KCEL on the account of not providing liquidated damages, various arbitrations that may goes against KCEL, certain notices from customers for risk & purchase as the KCEL was not able to deliver or hand over the projects on time etc. if accounted for in future may increase the losses;

    40.3. Networth of KCEL was expected be eroded by the end of the financial year;

    40.4. KBL had engaged ICICI Investment Banking Group to identify investors to invest in KCEL i.e. KBL had actively thought of selling KCEL.

41. Based on the above, it appears that the stage had been reached when KBL felt that they would not be able to turn around the business of KCEL and that, if KBL were to sell KCEL, they would get a valuation of approx. Rs. 53 crore to Rs. 58 crore below their invested amount. In normal course, when businesses / entities are divested, one of the methods of doing valuation is to look at the discounted cash flows that the entity is expected to generate in the future. Thus, if an external valuation exercise had thrown up a valuation at Rs. 53 crore to Rs. 58 crore below their invested amount of Rs. 148 crore

`

(Acquisition Price Rs. 60 crore, KBL unsecured Loan Rs. 65 crore and IOB Term Loan Rs. 23 crore) then, as on March 08, 2010, a loss of approximately Rs. 53 crore to Rs. 58 crore had already occurred to KBL on investment / advances given to KCEL, in one form or another, irrespective of what course of action they chose, and it was know that KBL would not be able to recover its entire investment made in KCEL. Thus, the information as to capital loss of the investment / advances given to KCEL had become available as on March 08, 2010, via the Note attached to the Board Agenda.

42. Further, upon perusal of the minutes of the board meeting of KBL dated July 27, 2010, I note that some of board of directors / members had sought a presentation on KCEL, which demonstrated their concern on the issue. Thereafter, a report on the viability study of KCEL was prepared and shared with KG-MOB on August 28, 2010. The viability report stated that KBL had acquired KCEL in 2006-07 for Rs. 61.33 Crore. KBL's financial stake in KCEL as on March 31, 2010 was investment in equity shares of Rs. 71.33 crores (initial Rs. 61.33 crore and additional Rs. 10 crore) and unsecured interest free loans of Rs. 58.63 crores i.e. total financial stakes of Rs. 129.96 crores. The report further stated that *"KCEL is not in position to repay the loan funds of KBL and there is a total diminution in the value of equity shares of KCEL. KBL has already lost opportunity to earn interest by not charging interest on loan. Despite KBL financial assistance, KCEL could not improve its performance"*. The viability report outlined three options to KBL (a) Continuance of standalone KCEL; (b) Merger with the parent company KBL (c) Sale of KCEL (as is where is basis with no future obligation to KBL). The viability report further noted that upon seeking expression of interest, one party had expressed its interest to buy KCEL for Rs. 65 crore (i.e. at a capital loss of Rs. 64.96 crore to KBL). It is also noted that viability report had estimated the capital loss to Rs 84.96 Crore including a notional interest loss of Rs. 20 Crore.

43. Further, upon perusal of the Minutes of Board meeting of KBL dated September 03, 2010, I note that after due deliberation in the said board meeting of KBL, the recommendation made in the viability report had been considered, adopted and approved in the said board meeting of KBL i.e. the board of KBL after considering the net loss has approved the sale of KCEL on an "as is where is basis" for a value of upto Rs. 65 crore.

`

44. Further, upon perusal of Minutes of Board meeting of KBL dated April 26, 2011, I note that the outstanding amount advanced to KCEL as of end of March 2011 was about Rs. 67.47 crore. The board of KBL, after considering various reasons and their best effort to revive KCEL, came to the conclusion that no recovery of the due amount was possible and decided to write off the outstanding amount of Rs. 67.47 crore advanced to KCEL.

45. The Noticees have submitted that the decision to sell KCEL and the decision to write off advances are completely distinct and therefore the information about write off came into existence on April 26, 2011 and not on March 08, 2010. The option to write-off the loans advanced to KCEL was considered or discussed by the KBL for the first time in its Board meeting dated April 26, 2011.

46. I note that the Noticees' interpretation of the SCN is erroneous in terms of what the unpublished price sensitive information ("**UPSI**") is alleged to be. The SCN clearly articulates that the information on the capital loss of the investment/advances given to KCEL is alleged to be the UPSI. However, the Noticees appear to be taking an interpretation that the write off of the loans to KCEL in the books of accounts of KBL is the event, the information about which, is the UPSI. This is clearly not the case.

47. The above mentioned erroneous interpretation of the Noticee can be more aptly demonstrated by way of a suitable hypothetical situation, as below:

    47.1. It may be assumed for a moment that KBL had a warehouse full of raw material valued at Rs 100 Crore. In the month of January, due to an unfortunate accident, there was an explosion in the warehouse and a significant quantity of the raw material stored there was damaged/destroyed in the explosion. KBL hired an assessor to assess the damage and find a buyer for the remaining raw material on an "as is where is basis". The assessor reverted that as per his assessment, he believed that he could find a buyer for the goods at a price of approximately Rs 60 Crore. It may further be assumed that a note on the explosion in the warehouse was circulated to the directors of the company, as part of the agenda of a board meeting in March, giving details of the original value of Rs 100 Crore, the nature and extent of damage due to the explosion and the estimated value at which the remaining raw material could possibly be sold. Hence, the information regarding the loss due to the explosion came to the knowledge of the directors in March itself.

`

47.2. The directors, naturally, being concerned, ask for a more detailed report on the matter to evaluate all available options, including the viability of salvaging the remaining raw material, selling the same on an "as is where is basis" and any other alternative.

47.3. In due course, this report is submitted to the Board in September with a recommendation to sell the remaining raw material rather than salvage the same and this recommendation is accepted. Even as a buyer is being found, and since these things take time, it may be assumed, that in recognition of the damage and loss, the company decides to write down its inventory of raw material in its books of accounts to the tune of Rs 45 Crore in the following March accounts. An announcement to this effect is made in April after the Board adopts the accounts.

47.4. In other words, the loss took place in the explosion in January and information regarding the estimate of the same was available to the directors through the note circulated with the agenda for the board meeting in March. The decision to sell the remaining material on an "as is where is" basis was taken in September, write-down of the inventory i.e., accounting for the loss, was done as of the following March. And this was disclosed to the market in April after the Board adopted the accounts.

47.5. Keeping this hypothetical scenario in mind, it may be assumed that an SCN is issued which makes the allegation that the directors had access to the UPSI of the loss of raw material in March of the previous year itself, when the note on the damage and estimated sale value was circulated.

47.6. The Noticees seek to interpret the SCN as "the UPSI is the information on the accounting of the loss" which was approved by the Board only 13 months later in April of the following year. And on this basis, they submit that the UPSI came into existence only in April of the following year. Clearly, however, the loss had occurred much earlier and the directors had access to this information much earlier, based on the note circulated to them in March of the previous year itself.

48. Leaving the hypothetical situation and reverting to the facts and circumstances of the case before me, I find that the capital loss of investment/ advances given to KCEL by KBL had occurred much earlier than claimed by the Noticees and the directors of KBL had access to this information in March 2010 itself when the note on KCEL outlining its extremely poor financial health and estimated sale value (at a loss) was circulated to the directors of KBL.

`

Thus, I find no merit in the argument of the Noticees that the UPSI came into existence for the first time in April 2011.

49. In my view, the note attached to the Agenda for the Board Meeting of KBL held on March 08, 2010, made it quite clear that KCEL was hemorrhaging cash and that options were limited. In 3 years the management had not managed to streamline KCEL. A professional process with the investment bankers, for the sale of KCEL, had thrown up a net value that would mean a capital loss of between Rs. 53 crore to Rs. 58 crore. Just like with the explosion in the ware house, even pending write-down of inventory value in the books of accounts, the insiders knew that a part of the inventory was lost and had a reasonable estimate of the same, similarly, with KCEL, even pending write off of the loan or write down of investment, insiders knew that a part of the capital invested was lost, and had a reasonable estimate of the same.

50. Thus, the UPSI was not the information on the event of writing off the loan or the event of deciding to sell KCEL, but the information / knowledge that a significant part of the capital was lost. Asking for a viability report on KCEL before finally deciding to sell it / write off the loan / write down the investment is a prudent action but does not detract from KBL's knowledge / understanding that a significant part of the capital invested in KCEL was lost.

51. Thus, the UPSI as alleged in the SCN i.e. information on capital loss of the investment / advances to KCEL came into the hands of the Directors of KBL at the time of circulation of the note attached in the agenda for the board meeting of KBL to be held on March 08, 2010. Thus, it was in their hands on March 08, 2010.

52. The Noticees submitted that minutes of the Board Meeting dated March 08, 2010 have not been provided to them. In the absence of such Board minutes, they are not aware whether any decision on the said note had been taken in the Board meeting held on March 08, 2010 or not. I note that the said minutes are not relied upon in the present proceedings at all. I note that in companies, prior to the board meetings, the agenda papers of said board meetings are circulated among all directors of the company. I also note that if an extra item has been placed before the board in a particular board meeting, the said item through note is circulated among the board of directors who are present in that board meeting.

`

Thus, I am of the view that the information regarding that item is available with the board of directors who are present in that board meeting, even if the decision on that particular item has not been taken or in fact, even if discussions have not been held on that item during the meeting. In the present matter, I note that what is relevant is that information of capital loss of the investment/advances given to KCEL was available to the Board of Directors of KBL who attended the Board meeting held on March 08, 2010 via the note attached to the Agenda. The decision on that agenda item, whether taken or not, whether discussed or not, is not relevant to the case here.

53. The Noticees submitted that they did not consider findings of the Viability Report to be important or of material significance. It is further submitted that the minutes of the board meeting KBL dated September 3, 2010 demonstrates that despite the Viability Report having been circulated to all the board of directors of KBL prior to the aforesaid meeting, the recommendation in the viability report were neither considered nor adopted during the meeting.

54. In this regard, upon perusal of the viability report on KCEL circulated to Noticee No. 4, 5 & 6 on August 28, 2010 and Minutes of Board meeting of KBL dated September 03, 2010, I note that after due deliberation in the said board meeting of KBL, the recommendation made in the viability report had been considered, adopted and approved in the said board meeting of KBL, recognizing the fact that further steps need to be taken. Thus, I do not find any merit in the contention of the said Noticees that KBL did not consider the findings of the Viability Report to be important or of material significance and the recommendation in the viability report were neither considered nor adopted in the board meeting dated September 03, 2010. The viability report recommended the option of sale of KCEL (on an as is where is basis), due to which KBL would suffer a net loss of Rs. 64.96 crore and the same was adopted and approved in the KBL board meeting dated September 03, 2010.

55. Further, I note that as per the submission of Noticees, additional loans were advanced to KCEL by KBL through the financial year in question, prior to, and even after the 2010 Transaction. In this regard, I am of the view that, this does not necessarily indicate that KBL thought the loans advanced to KCEL were recoverable. From the material on record, it appears that these loans were in the nature of "Life Support" to a "patient in ICU"

`

pending a final decision on what to do with KCEL as evidenced by the explorations of options in the board meeting. Further, even after the write-off of the loans of KCEL, in 2011, KBL made further capital infusion of an amount of Rs. 25 crore in KCEL, knowing full well the difficulty in recoverability. The loans again, appear to have been granted in the form of "Life Support", pending further action / sale of KCEL.

56. Now, in order to ascertain whether the information of capital loss of investment/advance given to KCEL was price sensitive information, what is important is whether such information if published, would materially affect the price of KBL shares. From the documents available on records, I find the PAT of KBL for the FY 2009-10 was Rs. 117.50 crore. An amount of Rs. 53 crore to Rs. 58 Crore was estimated in the March 08, 2010 board meeting agenda note as a one-time capital loss. This estimated one-time capital loss was about 45% to 50% of the PAT of FY 2009-10 of KBL. Clearly impact of the loss on the PAT would be significant. Therefore, the information of capital loss, if known, would be extremely likely to materially affect the price of KBL shares.

57. In this context I note the argument of the Noticees that while certain losses were arising due to KCEL, at the same time profits were being generated through disposal of GEL of an almost similar quantum and during a similar period. I note that the fact of origin of profits due to the disposal of GEL does not in any way diminish the negative impact of the capital loss. But for the capital loss on account of KCEL, the profit of KBL would have been even higher after the disposal of GEL. In other words, the information as to capital loss of investment / advances given to KCEL would have an independent and material impact on the share price of KBL, independent of the positive impact of GEL sale.

58. Some of the Noticees submitted that capital loss of the investment / advances given to KCEL, wholly owned subsidiary of KBL, is not a price sensitive information as write-off of loans advanced to KCEL does not amount to whole or substantial disposal of undertaking of KBL and therefore does not qualify as "price sensitive information" under Section 2(ha) of the SEBI PIT Regulations on the following grounds:

58.1. Asset Side on the Balance Sheet of KBL as on March 31, 2010 reveals that the loan write off of an amount of Rs.67.47 crore granted to KCEL amounted to 6.26% of the

`

asset size of KBL. In order to attract the explanation to Regulation 2(ha) of the PIT Regulations, KBL needs to dispose off whole or substantial part of the undertaking itself. It is submitted that a transaction of writing off a loan of Rs.67.47 crore extended to a subsidiary does not meet this criterion.

58.2. Considering the asset size of KCEL *vis a vis* that of KBL, KCEL was not a "material subsidiary" of KBL as per the definition set out in the Listing Agreement.

59. In this regard, I note that the contention of the Noticees that the impact of capital loss has to be considered relative to the size of the Balance Sheet is untenable. The writing-off of the loans will affect the amount of profit earned by the Company in that year and thereby affecting the profit and loss account. This would also have a recurring and ongoing impact on profit and loss account of the Company (detailed in paragraph 112). Thus, in the current context, the materiality of the same has to be considered relative to the profit and loss of the company and not the assets and liabilities of the Company. Therefore, in my view the estimated amount of Rs. 53 crore to Rs. 58 Crore as a one-time capital loss, which was about 45% to 50% of the PAT of FY 2009-10 of KBL was material information.

60. It is incorrect to contend that as KCEL itself does not qualify as a material subsidiary of KBL, the capital loss incurred by KBL in respect of KCEL cannot be construed to be material. The reason being that for any information to be considered as price sensitive, or material information, the same needs to be tested under the definition clause for price sensitive information. The requirement of material subsidiary is not relevant in the current context. The information about KCEL can be PSI, even if KCEL itself does not qualify as a material subsidiary. The test of whether any information is price sensitive is the likelihood of its impact on the share price if published. It is untenable to argue that a write –off that reduces KBL annual profit by 50% is not material or not price sensitive.

61. Noticees submitted that in order to attract the explanation to Regulation 2(ha) of the PIT Regulations, KBL needs to dispose of whole or substantial part of the undertaking itself. In this regard, I note that there is a specific allegation that in terms of Regulation 2(ha) of PIT Regulations, 1992, the information of capital loss is price sensitive information. Therefore, what needs to be determined is whether the information of capital loss is price

`

sensitive information in terms of the test laid down in Regulation 2(ha) of PIT Regulations, 1992. If it satisfies the test mentioned in primary clause of Regulation 2(ha) of PIT Regulations, 1992, the testing of whether the said price sensitive information also falls within any of the deeming provisions is not required.

62. However, I note with interest, from the documents available on record, that KBL had acquired 100% equity share capital of KCEL (formerly known as *"Abans Construction Private Limited"*) in September 2006. Upon perusal of KBL disclosures available on BSE website, it is noted that KBL had made a disclosures on September 26, 2006 about the said acquisition of 100% equity share capital of KCEL. I also note that on April 26, 2011, KBL while making the disclosure of audited financial result for the quarter and year ended March 31, 2011, had also made the disclosures that Rs. 67.47 crore advances given to KCEL were written off. Thus, I am of the view that KBL had considered the acquisition of KCEL as well as write-off investment / advances given to KCEL as material information and made the relevant disclosures to the Exchange.

63. Thus, in view of the disclosure made by KBL to exchange regarding acquisition of KCEL and the argument of Noitcees that information of capital loss arising out of disposal of investment / advances given to KCEL did not qualify as material appears inconsistent. In view of the above, I do not find any relevance in the submission of Noticees that only when KBL disposes off the whole or substantial part of its undertaking, would the information qualify as price sensitive.

64. In view of the foregoing, I am of the considered view that the information of capital loss of the investment / advance given to KCEL by KBL would fall within the definition of price sensitive information under Regulation 2(ha) of the PIT Regulations, 1992 as alleged in the SCNs.

65. As regards the issue whether PSI is unpublished the same is to be tested as per the definition provided in the PIT Regulations, 1992. The relevant provisions in the PIT Regulations, 1992 are reads as under:

> ***Regulation 2(k) -*** *Unpublished means information which is not published by the company or its agents and is not specific in nature.*

`

66. As per Regulation 2(k) of PIT Regulations, 1992 "unpublished" means information which is not published by the company or its agents or which is not made public in print or electronic media and is not specific in nature.

67. I note that the important question for consideration in this issue is when the PSI can be said to have originated / come into the hands of the insiders and when such PSI had come into public domain. I note that the date from where the PSI arises till the date such PSI is published is an Unpublished Price Sensitive Information Period (hereinafter referred to as **"UPSI Period"**). I note that the information as to capital loss on investment / advances to KCEL came into the hands of the insiders on March 08, 2010 when the note on KCEL attached with the agenda of the Board meeting of KBL held on March 08, 2010 was circulated. The information regarding capital loss of the investment / advances finally resulted in the writing-off of the loan / advances to KCEL to the tune of Rs. 67.47 crore by KBL in its board meeting dated April 26, 2011. Publication of the financial results incorporating the accounting for the capital loss in the books of account was done on April 26, 2011 as part of the publication of the audited financials results of KBL for the quarter and year ended March 31, 2011. This evidences that the UPSI came into the public domain on April 26, 2011.

68. Thus, information on capital loss of the investment / advances given to the KCEL by KBL (hereinafter referred to as ***"UPSI-1"***) was unpublished for the period March 8, 2010 to April 26, 2011 (hereinafter referred to as ***"UPSI Period-1"***) in terms of Regulation 2(k) of PIT Regulations, 1992.

Sub-Issue No. 1.3: *Whether Noticee No. 1 to 6 and Noticee No. 9 were in possession of UPSI-1 when the transaction dated October 06, 2010 happened and thereby traded in the shares of KBL on October 06, 2010 while in possession of UPSI-1?*

69. I have already held in the first sub-issue above that Noticee No. 1 to 6 and Noticee No. 9 were insiders. Now the question arises as to whether these insiders i.e. Noticee No. 1 to 6 and Noticee No. 9 were in possession of UPSI -1 during UPSI Period -1, particularly before October 06, 2010 (date of transaction).

`

70. From the documents available on record, with regard to the possession of UPSI-1, I note the following:

70.1. Rahul (Noticee No. 4), Gautam (Noticee No.6), Alawani (Noticee No. 9) had attended the Board Meeting of KBL held on March 08, 2010 wherein the UPSI-I has originated. Thus, I am of the view that as on March 08, 2010, Noticee No. 4, 6, and 9 were aware of the UPSI-1 of capital loss on investment/advances given to KCEL.

70.2. Noticee No. 4, 6, and 9 had attended the Board Meeting of KBL held on July 27, 2010, where in some of the Board Members have requested for a presentation on KCEL.

70.3. A report on the viability study of KCEL was shared with Noticee No. 4, 5 & 6 on August 28, 2010 and September 01, 2010, wherein a further confirmation of UPSI of capital loss of investment/advance happened, with presentation of an option of sale of KCEL (as is where is basis), due to which KBL would suffer a net loss of Rs. 64.96 crore.

70.4. Noticee No. 4 & 9 had attended the Board Meeting of KBL held on September 3, 2010 wherein a reconfirmation of UPSI of capital loss of investment/advance happened, with the disposal of investments in KCEL being discussed and after considering the net loss of Rs. 64.96 crores, it was approved to sell KCEL on an "as is where is basis" for a value of upto Rs. 65 crores.

70.5. Noticee No. 4 & 9 had attended the Board Meeting of KBL held on April 26, 2011, wherein, a further confirmation of UPSI of capital loss of investment/advance happened, with the decision to write-off of loans / advances to the tune of Rs.67.47 crore. The information of the capital loss of investment / advances has resulted into the event of recognizing the capital loss on investment / advances given to KCEL to the tune of Rs. 67.47 crores in the books of accounts. This write off was 57.42% of the Profit after Tax of previous FY 2009-10 of KBL.

71. Thus, from the above, I note that regarding UPSI-1, right from March 08, 2010 till April 26, 2011, Noticee No. 4, 6, and 9 had possession of the same. I also note that the viability

`

report on KCEL was also shared with Noticee No. 5 (Atul). Thus, I note that before October 06, 2010, Noticee No. 4, 5, 6, and 9 had possessions of UPSI-1.

72. Further, I note that Noticee No. 1, 2 & 3 are wives of Noticee No. 4, 5 & 6 respectively. They are also promoters of KBL. Furthermore, with regard to the wives being insiders and reasonably expected to have UPSI, reliance is placed on the judgment of Hon'ble SAT in the matter of *Poonam Garg vs SEBI* decided on March 22, 2018 which is referred at paragraph 34 above. Thus, by virtue of these relationships with Noticee No. 4, 5 & 6, on preponderance of probability basis, I am of the view that Noticee No. 1, 2 & 3 were in possession of UPSI-1 before October 06, 2010.

73. From the documents available on record, I note that on October 06, 2010, there was an inter-se transfer of 1,07,18,400 shares through block deals on the stock exchange platform among 7 promoter entities of KBL. The details of the transactions are in the following table:

Table No. 12

Name	**Designation**	**Buy (Qty)**	**Sell (Qty)**	**Avg. Buy/ Sell Price (Rs.)**
Alpana Rahul Kirloskar	Promoter	0	19,49,900	256
Arti Atul Kirloskar	Promoter	0	19,49,900	256
Jyotsna Gautam Kulkarni	Promoter	0	19,49,900	256
Rahul Chandrakant Kirloskar	Director / Promoter	0	16,22,900	256
Atul Chandrakant	Promoter	0	16,22,900	256
Gautam Achyut Kulkarni	Vice Chairman / Promoter	0	16,22,900	256
Kirloskar Industries Limited	Promoter	1,07,18,400	0	256
Total		**1,07,18,400**	**1,07,18,400**	

Further, upon perusal of the minutes of the Board Meeting of KIL dated July 28, 2010, I note that the Board had granted the authority to Noticee No. 9 i.e. Mr. A N Alawani (Director of KIL) and Aditi Chirmule (Company Secretary) to execute the above transaction on behalf of KIL and they had accordingly placed the order for the trades.

74. From the submissions of the Noticee No. 1 to 6, I note that they have not denied the aforesaid transactions rather they have accepted that the said transactions happened

`

between Noticee No. 1 to 6 and KIL. Hence, in view of the foregoing, I am of the view that Noticee No. 1 to 6 were in possession of UPSI- 1 as on date of transaction i.e. October 06, 2010 and thus Noticee No. 1 to 6 sold the shares of KBL from their trading account on October 06, 2010 while in possession of UPSI-1.

75. Noticee No. 9 (Mr. A N Alawani) submitted that he had been authorized to execute the above transaction on behalf of KIL and he, himself had not traded in the shares of KBL. From the document available on record, I find that Noticee No. 9 has indeed not traded in KBL shares in his own trading account and Noticee No. 9 was authorized by KIL board to execute the transaction that took place on October 06, 2010, on behalf of KIL and trading has been done in the trading account of KIL. It is noted that the Noticee No. 9 was in possession of UPSI-1. I note that Noticee No. 9 was trading as an authorized "agent" for and on behalf of company. However, I note that the decision to trade in this case was not his own decision alone, but that of the Board of KIL and as director, he had played a role in that decision. Further, I note that at the time of trading on behalf of KIL, he was having UPSI-1. At this juncture, I refer to the definition of 'dealing in securities' mentioned under Regulation 2(d) of PIT Regulations, 1992 which state that *"dealing in securities means an act of subscribing, buying, selling or agreeing to subscribe, buy, sell or deal in any securities by any person either as principal or agent".* Thus, in the context of present case, in respect of Noticee No.9, as per said definition dealing in securities means an act of buying KBL shares by Noticee No. 9 as an agent of KIL. Further, as per Regulation 3(i) of PIT Regulations, 1992, I also note that no insider (Noticee No.9), on behalf of any other person (person also includes company i.e. KIL), shall deal in securities of a listed company (KBL) when in possession of any UPSI. Thus, as per the Regulation 2(d) read with Regulation 3(i) of PIT Regulations, 1992, I am of the view that Noticee No. 9 being an insider was in possession of UPSI-1 at the time of transaction dated October 06, 2010 had dealt in KBL shares as an agent of KIL. Thus, the allegation of violations of provisions Section 12A(d) and (e) of SEBI Act, 1992 and provisions of Regulation 3(i) read with Regulation 2(ha) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 against Noticee No.9 stands established.

Sub-Issue No. 1.4: *Whether Noticee No. 1 to 6 on October 06, 2010 had traded in the shares of KBL on the basis of UPSI-1?*

`

76. The prohibition contained in Regulation 3 of the PIT Regulations, 1992 applies not only when the insider has traded "on the basis of" any unpublished price sensitive information but also applies when the insider has traded "while in possession of" any UPSI. When it comes to imposition of monetary penalty under section 15G of SEBI Act, 1992, the requirement of dealing in securities is "on the basis of" UPSI. Therefore, violation of section 15G of SEBI Act, 1992 read with Regulation 3 of the PIT Regulations, 1992 also requires the proof of dealing in securities "on the basis of" UPSI. However, the same is not the case in respect of passing of appropriate directions under Section 11(4), 11B(1) of SEBI Act, 1992 for violation provision of Section 12A(d) & (e) of SEBI Act, 1992 and Regulation 3 of PIT Regulations, 1992, which requires only establishing the fact of dealing in securities "while in possession of" UPSI.

77. Some of the Noticees have submitted that, the SCNs do not even allege that the said Noticees have dealt in the shares of KBL "on the basis of" any UPSI. In this regard, I note, for the purpose of imposition of penalty under Section 15G of SEBI Act, 1992, the requirement is to prove that insider has traded not only "while in possession of" any UPSI but also "on the basis of" any UPSI. However, there is a presumption, albeit rebuttable, that if trading was done "while in possession of" UPSI, then it was done "on the basis of" UPSI. I note that SSCNs dated July 24, 2020 had referred to the Section 15G of SEBI Act, 1992. The allegation of trading in the shares on the basis of UPSI is embedded under Section 15G of SEBI Act, 1992. Further, I also note that Noticees made their submissions to counter that their trades were not "on the basis of" UPSI. Thus, said Noticees had understood the import of the allegation and had submitted their reply accordingly. Therefore, no prejudice has been caused to the Noticees on this count.

78. Further, Noticees had placed reliance in the matter of *Mrs. Chandrakala vs Adjudicating Officer SEBI* dated January 31, 2012 wherein Hon'ble SAT has held that the prohibition contained in Regulation 3 of the PIT Regulations, 1992 applies only when the insider has traded "on the basis of" any unpublished price sensitive information. The trades executed should be motivated by the information in the possession of the insider. Noticees had also placed reliance in the case of *Manoj Gaur vs SEBI* dated October 03, 2012, wherein the Hon'ble SAT set aside the Order of SEBI since the trading pattern in that case reflected that the trades could not be said to be "on the basis of" the alleged UPSI.

`

79. The burden of proof lies on the insider to prove that he has not dealt in the securities of company "on the basis of" UPSI but "on the basis of" other circumstance, as there is a presumption, albeit rebuttable, that the insider is trading on the basis of UPSI, as laid down in *Chandrakala* case.

80. Noitcee No. 1 to 6 submitted the following rationale and basis for carrying out the transactions in the shares of KBL on October 06, 2010:

    80.1. KIL is a part of Promoter Group. It had approximately Rs. 300 crores surplus funds and it was proposed to gainfully employ these funds;

    80.2. There was an expectation of good returns from long term investment in KBL on the basis of the then stock market scenario, the profitability and growth of KBL;

    80.3. Investment in group companies was one of the main objects of KIL and KIL had been investing in the shares of group companies as long term investment;

    80.4. The decision taken at the July 28, 2010 board meeting of KIL states that the transaction would be at the prevailing market price as on the date of acquisition.

    80.5. Transaction was consummated on October 6, 2010 only because during that time Late Mr. Gautam Kulkarni (Noticee No. 6) had just been diagnosed with cancer and hence the promoters were unclear as to when they would be in a position to sell their shareholding in KBL to KIL (since the promoters had indicated their preference to sell their shares in KBL to KIL together on the same date and at the same price).

    80.6. The UPSI alleged in the SCN, is alleged to be negative, yet the Noticee No. 9 is alleged to have dealt in the shares by voting to buy the shares, which is the exact opposite of what would have been the trade if Noticee No. 9 had traded "on the basis of" the alleged UPSI.

    80.7. The entire transaction was to reorganise the Kirloskar family holdings in the group companies, whereby the Selling Promoters (Noitcee No. 1 to 6) sold shares to another promoter (KIL) and then consolidated their holdings in KIL by increasing their stake therein from 15% to 72% (by or on 23.4.2014).

    80.8. Noticee No. 1 to 6 and Noticee No. 9 had the very same alleged UPSI; therefore no question of alleging that they traded "on the basis of" any UPSI can arise.

`

81. Upon perusal of the *Chandrakala* case and *Manoj Gaur* case, I find that facts and circumstance of both these cases are different from the present case. In the *Chandrakala* case the appellant used to trade regularly in the shares of the company and her trades were genuine transactions carried out by her in the normal course of business and her trading pattern demonstrated that the trading was not based on the unpublished price sensitive information and it was thereby held that the appellant was not in violation of Regulation 3 of PIT Regulations, 1992.

82. Further, the facts and circumstances of the *Manoj Gaur* case are that, Mrs. Urvashi Gaur and Mr. Sameer Gaur has been trading in shares not only in the scrip of the company but also in the scrip of other companies and they had traded in the scrip of the company even prior and after the publication of UPSI and during the UPSI period they had traded in very small quantity of shares. The Hon'ble SAT looking at the trading pattern and the number of shares purchased during UPSI period, held that trading was done by them not on the basis of UPSI. Thus, in the *Chandrakala* case and the *Manoj Gaur* case the Hon'ble SAT had looked into the trading pattern of entities. The trading pattern of the Noticees in present matter is not similar to the specific trading pattern of entities referred in *Chandrakala* case and *Manoj Gaur* case wherein Hon'ble SAT held that their trading was not based on the UPSI.

83. In the present matter, I note that no trading in the shares of KBL has been done by the Noticee No. 1 to 6 prior to or after the UPSI-1 becoming public; the said Noticees did not traded regularly in the shares of KBL; the said Noticees are not in the business of trading, therefore their trading is not in the normal course of their business; the transactions dated October 06, 2010 by the said Noticees in KBL shares were one-of transactions in the shares of KBL. Thus, in view of facts and circumstance of present matter, I am of the view that the decision of Hon'ble SAT in the matter of *Chandrakala* and *Manoj Gaur* is not applicable in the present case. However, in keeping with the spirit of the PIT Regulations, 1992, I examine the trading pattern of the said Noticees in subsequent paragraphs.

84. The Noticees submitted that investment by KIL in group companies was one of its main objects. KIL had approximately Rs. 300 crores surplus funds and having an expectation of good returns from long term investment in KBL, KIL invested in the shares of KBL. In this

`

regard, from the submissions of the said Noticees, I find that the quantum of investment made by KIL in its other group companies is very low as compared to the quantum of investment made by KIL in the shares of KBL. Further, as per annual report of KIL for FY 2009-10, KIL had de-merged its 'auto components' business, changed its name and was engaged in the business of Wind Mill and Investment operations with effect from April 01, 2009. Further, as per annual report of KIL for FY 2010-11, KIL had become an NBFC and Core Investment Company as per the RBI Regulations. Thus, on the basis of document available on records, it appears that during the period July-October 2010 period, KIL was in the process of becoming a core investment company having holdings predominantly in group companies.

85. As regards the argument that both buyers and sellers had the same UPSIs, I note that said exemptions from violation of insider trading i.e. inter-se transfer between promoters and transactions between buyer and seller, who have the same UPSI is not available under the PIT Regulations, 1992. The same is given under the PIT Regulations, 2015 subject to certain conditions. I note that the transaction in question in the present matter happened in the year 2010 when PIT Regulation, 1992 was in effect. Upon perusal of Regulation 3 of PIT Regulations, 1992, I find that the said regulations do not exempt any inter-se transfer between promoters or transactions between buyer and seller, who have the same UPSI.

86. I am of the view that transactions between Noticee No. 1 to 6 and KIL had taken place on October 06, 2010 i.e. the time when PIT Regulation, 1992 was in force. Therefore, insider trading violations have to be determined under PIT Regulations, 1992.

87. Further, I am of the opinion that the basic presumption behind permitting the trading by insiders with parity of information under the PIT Regulations, 2015 is that –

    87.1. The decision makers for the transaction have parity of information AND
    87.2. The decision makers are independent of each other and able to act in the interest of their respective stakeholders without any undue influence of the other party.
    87.3. If any of the parties is dependent upon or under the influence/ control of the other party, then the influencing party can create disadvantage for the influenced party and its stakeholders under the pretext of parity of information.

`

87.4. If the same person is on both sides of the transaction, representing two different sets of stakeholders, it cannot be presumed that he would be able to act "independently" in the interest of both sets of stakeholders equally and thus one party can be disadvantaged to the benefit of the other under the pretext of parity of information.

87.5. It is not possible to accept that the intent of the regulation is to allow such mischief.

88. In the instant case of sale of shares between Notice No. 1 to 6 and KIL, even though there may be parity of information held by the decision makers, the entities are not independent of each other. In fact the decision making in KIL to buy the shares of KBL was under the influence of Noticee No. 1 to 6 on account of Noticee No. 8 being an employee of the Group of which the sellers were promoters and Noticee No. 9 being a Director appointed by the very same promoters. This dependence / influence negates the spirit of the PIT Regulation, 2015 and thus the beneficial provisions PIT Regulations, 2015, even if they were to be considered, cannot be said to be applicable in the instant case.

89. Noticee No. 1 to 6 had submitted that the transaction was consummated on October 6, 2010 only because during that time Late Mr. Gautam Kulkarni (Noticee No. 6) had just been diagnosed with cancer and hence the promoters were unclear as to when they would be in a position to sell their shareholding in KBL to KIL (since the promoters had indicated their preference to sell their shares in KBL to KIL together on the same date and at the same price).

90. With regard to the sale of shares of KBL, Noticee No. 1, 2 & 3 submitted that they don't know the rationale behind selling the shares of KBL on October 06, 2010 and all the decisions regarding the said sale was taken by their respective husbands. In this regard, I note that even if such trading is initiated by the decision of the husbands, it also the responsibility of the Noticee No. 1, 2 & 3 to ensure that the laws of the land are followed especially when the trading in the shares of KBL by Noticee No. 1, 2 & 3 was done from their individual trading accounts. I also note the fact that all the disclosures to the exchanges regarding the sale of said shares of KBL by Noticee No. 1, 2 & 3 were signed and filed by Noticee No. 1, 2 & 3 themselves and not through any Power of Attorney. . Further, in this regard, reliance is placed on the judgment of Hon'ble SAT in the matter of *Poonam Garg vs SEBI* decided on March 22, 2018 and *Mahavirsingh N Chauhan and*

`

ANR vs. SEBI decided on October 18, 2019 referred at paragraph 34 and 35 above respectively.

91. In respect of Noticees No. 1 to 6 decision to trade in KBL shares, they have submitted that the same has been done to reorganise the Kirloskar family holdings in the group companies. The promoters of KBL as well as of KIL (Noitcee No. 1 to 6) sold shares to another promoter (KIL) and then consolidated their holdings in KIL by increasing their stake in KIL. As regards the consolidation of family holdings, despite being given the opportunity, Noticee No. 1 to 6 have failed to furnish any direct evidence / details of the family arrangement indicating the parties to, the timelines or the quantity of consolidation by the parties to the family arrangement. In order to know, when and from whom, Noticee No. 1 to 6 have consolidated their holdings in KIL, the disclosures available on exchanges were perused. From the disclosures available on exchanges, it is noted that Noticee No. 1 to 6 had consolidated their holding in KIL in June 2011 quarter by buying the shares of KIL from other promoter entities (inter-se transfer) on May 20, 2011.

92. Thus, I specifically note the pattern of trading, the execution of the trade in the block trade window of the exchange, buyer and seller both being part of the Promoter group, all sellers selling at the same time at the same price and subsequent consolidation of holdings in KIL. I note that, even though there is no documentary evidence of this family arrangement of consolidation, on a preponderance of probability basis, there appears to be such an intent to consolidate family holdings and the decision to trade (taken on or before July 28, 2010) and the trades themselves on October 06, 2010, were done on this basis. Thus, I am of the view that there is some doubt whether the Noticee No. 1 to 6 had traded on the basis of the UPSI-1.

93. Thus, in view of the facts and circumstance of the present matter, including the pattern of trading by Noticee No. 1 to 6, I am of the view that the said Noticees have been able to effectively rebut the presumption that their trades were on the basis of UPSI-1. In the instant case, due to circumstantial evidence of a family arrangement which can also be a basis for transactions, it is difficult to conclude, on preponderance of probability basis, that the dealing in securities by Noticee No. No. 1 to 6 was on the basis of UPSI of capital

`

loss. Thus, I am inclined to give the benefit of doubt to Noticee No. 1 to 6 that the execution of trade on October 06, 2010 in KBL shares was probably not on the basis of UPSI-1.

94. I note that Noticee No. 9 was trading as an authorized "agent" for and on behalf of KIL. In the instant case, since the authorization can also be a basis for transactions, it is difficult to conclude, on preponderance of probability basis, that the dealing in securities by Noticee No. 9 was on the basis of UPSI of capital loss. Thus, I am inclined to give the benefit of doubt to Noticee No. 9 that the execution of trade on October 06, 2010 in KBL shares was probably not on the basis of UPSI-1.

95. In view of the foregoing, I am of the view that on July 28, 2010 / October 06, 2010, Noticee No. 1 to 6 had decided to trade / had traded in the shares of KBL while in possession of UPSI-1 and thereby violated the provisions Section 12A (d) and (e) of SEBI Act, 1992 and provisions of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 as alleged in the respective SCN. Thus, the allegation of violation of provisions Section 12A(d) and (e) of SEBI Act, 1992 and provisions of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 against Noticee No. 1 to 6 stands established. However, in respect of the allegation that the Noticee No. 1 to 6 and Noticee No. 9 had traded 'on the basis of' UPSI-1 on October 06, 2010, the benefit of doubt is being extended to them.

Sub-Issue No. 1.5: *Whether information of financial results of KBL for quarter July – September 2010 was price sensitive information in terms of Regulation 2(ha) of PIT Regulations, 1992; and was unpublished for the period August 06, 2010 to October 28, 2010 in terms of Regulation 2(k) of PIT Regulations, 1992; and Whether Noticee No. 1 to 6 and Noticee No. 9 were in possession of said information on October 06, 2010 and thereby traded in the shares of KBL on October 06, 2010 while in possession of as well as on the basis of said information?*

96. I note that the second PSI that has been alleged in the SCNs is information of financial results of KBL for the quarter July-September 2010 (hereinafter referred to as **"UPSI-2**") under Regulation 2(ha) of PIT Regulations, 1992. The said PSI-2 has been alleged for the

`

period August 06, 2010 (date of KG-MOB report for July 2010) to October 28, 2010 (date of announcement of financial results of September 2010 quarter) (hereinafter referred to as **"UPSI Period-2**").

97. It is alleged in the SCNs that the financial position of KBL in September 2010 had deteriorated both on monthly and quarterly basis in comparison with previous year month and quarter respectively on the following grounds:

97.1. The total income for the month of July, 2010 increased to Rs.142.0 crore from Rs.122.8 crore in July 2009 i.e. an increase of Rs.19.2 crore (or 15.63%). However, in the same period, PAT decreased to Rs.18.0 crore (July 2010) from Rs.31.0 crore (July 2009) i.e. a decrease of Rs.13 crore (i.e.-41.94%).

97.2. The total income for the month of August, 2010 decreased to Rs.149.10 crore from Rs.277.10 crore in August 2009 i.e. a decrease of Rs.128.0 crore (i.e.-46.19%). In the same period, PAT decreased to Rs.11.1 (August 2010) crore from Rs.22.9 crore (August 2009) i.e. a decrease of Rs.11.8 crore (i.e.-51.53%)

97.3. The operating income during quarter ended September 30, 2010 decreased to Rs.447.93 crore from Rs.552.64 crore in the quarter ended September 30, 2009 i.e. a decrease of Rs.104.71 crore (i.e.-18.95%). In the same period, Profit After Tax (PAT) also decreased to Rs.19.49 (quarter ended September 30, 2010) crore from Rs.33.14 crore (quarter ended September 30, 2009) i.e. a decrease of Rs.13.65 crore (i.e.-41.19%).

98. Upon perusal of documents available on record, before making a determination on UPSI-2 and UPSI Period-2, I note the following:

98.1. The impugned transactions in the shares of KBL took place on October 06, 2010.

98.2. However, the decision to enter into these transactions, i.e. to buy KBL shares from the promoters of KBL (who are also promoters of KIL) was taken by KIL at its board meeting on July 28, 2010. The proposal for the same was introduced by a promoter/ director (Noticee No.5) of KIL himself, thus, it may be reasonably assumed that the decision to sell the shares was taken by the said promoters prior to July 28, 2010.

98.3. Thus, for the purpose of determining whether the insiders traded in the shares of KBL while in possession of UPSI-2, the relevant date is October 06, 2010.

`

98.4. However, for the purpose of determining whether the insiders traded on the basis of UPSI-2, the relevant date is July 28, 2010.

99. Further, with regard to the UPSI-2, I find that SCNs has alleged that KG-MOB reports for the months of July, August and September 2010 were relevant documents for the preparation of Financial Results of KBL for quarter July – September 2010.

100. In this regard, some of the Noticees have submitted that price sensitive information includes "periodic financial results" of a company computed only on completion of each quarter and not monthly financial position of a company. Any other information which could be connected and eventually become part of the financial results cannot be considered to be equivalent to the "financial results". If SEBI suggestion that KG-MOB reports formed the starting point for creation of financial results is considered to be true then each and every management information system report that contains any numbers showing business and operations of a company would be considered as financial results, a fallacy that is not contemplated under law. The KG-MOB report was being utilized by the management of KBL to ascertain the business progress of KBL. In short, the said Noticees have contended that the said reports were merely in the nature of a business monthly information system (MIS), and thus did not contain price sensitive information.

101. In this regard, I have already noted that "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of the company. Several price sensitive pieces of information relating to the financials of the company may arise prior to the publication of the financial results. At the stage of publication, several price sensitive pieces of information relating to the financial condition of the company are integrated and published as quarterly results which in itself is deemed to be price sensitive information. Any particular piece of price sensitive information, after its origin, may be in possession of various persons for legitimate purpose; the publication of such PSI may happen only after a period of time but it does not take away the fact that the pieces of information may be price sensitive on their own, even while they are unpublished in the form of periodic financial results.

`

102. It is for these reasons that Promoters / Directors are often referred to as "perpetual insiders" because they have continuous access to flow of information that has a bearing on the periodic financial results disclosed to the public.

103. In the present matter, upon perusal of the KG-MOB Report for the month of July 2010 dated August 06, 2010 and KG-MOB Report for the month of August 2010 dated September 03, 2010, I find that the said KG-MOB Reports reflect financial information and financial data for the month of July, August and September 2010 such as:

- Balance Sheet,
- Profit & Loss,
- Growth over PY actual,
- Fixed cost analysis,
- Fund Flow statement,
- Cash Generation statement,
- Capital Market Investment,
- Key Financials Ratio,
- Sales figures,
- Manufacturing expenses,
- Borrowing,
- Receivables,
- Inventories,
- Capital Expenditure,
- Net Current Assets etc.

104. Thus, I am of the view that the said KG-MOB reports are not merely a management information system report but are fairly detailed financial reports of KBL which contained many financial figures and data for the month of July, August and September 2010. Of course it would need to be determined whether the particular financial information is price sensitive or not. The test would be whether any such financial information, if published, has the likelihood of affecting the price of the shares. If it satisfies this test, it does not change its character simply because the same is given to the management as part of management information system. Therefore, given the highly detailed as well as

`

comprehensive set of financial information contained in the KG-MOB reports, I am of the view, that in the instant case, information contributing to preparation of Financials for July – September 2010 arose (albeit in parts) on August 06, 2010, September 03, 2010 and October 11, 2010.

105. Further, I note that the agenda for the board meeting dated October 28, 2010 alongwith the financials of KBL for quarter ended September 30, 2010 was shared with the Board of Directors of KBL on October 20, 2010 and financials of KBL for quarter and half year ended September 30, 2010 were published on BSE and NSE on October 28, 2010.

106. Thus, I find that the information in the KG-MOB reports, on account of being both detailed and comprehensive, was related to and reflective of and had a bearing on financial performance for July-September 2010 quarter, and thus was indeed price sensitive information and remained unpublished till October 28, 2010. Thus, information related to financial results of KBL for the quarter July-September 2010 (***UPSI-2***) was unpublished for the period August 06, 2010 to October 28, 2010 (***UPSI Period-2***) in terms of Regulation 2(k) of PIT Regulations, 1992.

107. In the present case and in the context of the trading on October 06, 2010 while in possession of UPSI-2 (and as per paragraph of 98.3), I note that financial results of a company are sensitive information. Upon perusal of PIT Regulation, 1992, in law, if it is only to make a determination of trading while in the possession of UPSI, then it need not be examined whether the financial information in the hands of the insiders was reflecting deteriorating financials or improving financials. Therefore, I am of the view that it is adequate to determine whether financial information (deteriorating or otherwise) existed and whether it was in the possession of insiders or not at the time when they had traded.

108. In the present case, with regard to the possession of UPSI-2, from the documents available on record, I note that KG-MOB Reports which reflected / and had a bearing on KBL financials for the month of July 2010, August 2010 and September 2010 were shared with Noticee No. 4, 6, and 9 on August 06, 2010, September 03, 2010 and October 11, 2010 respectively. Agenda for the board meeting dated October 28, 2010 alongwith the financials of KBL for September 30, 2010 was circulated to the Board of Directors of KBL on October 20, 2010. In this regard, I note that the Noticees have not denied that they were

`

in possession of the KG-MOB reports for the month of July 2010 on August 06, 2010 and for the month of August 2010 on September 03, 2010. Further, I have already determined in sub-issue 1.1 above that Noticee No. 1 to 6 and Noticee No. 9 were insiders. Thus, in view of the same, I note that Noticee No. 1 to 6 and Noticee No. 9, were in possession of UPSI-2 on October 06, 2010 to the extent of detailed financial information related to July 2010 and August 2010, which had a bearing on, and were reflective of the financial results for July – September 2010 quarter. Thus, Noticee No. 1 to 6 had sold the shares of KBL on October 06, 2010 while in possession of such UPSI-2. Further, finding w.r.t Noticee No. 9 having dealt in the shares of KBL while in possession of UPSI-1 is mentioned at paragraph 75. The same logic / finding applies to his having dealt is KBL shares while in possession of such UPSI-2 as well.

109. Further, in the present case and in the context of the trading on October 06, 2010 on the basis of UPSI-2 (and as per paragraph of 98.4), I note that KBL held its board meeting on July 27, 2010 and announced its financial results for June 2010 quarter on the same day. Thus, June 2010 quarter results of KBL were in public domain on July 28, 2010, when KIL held its board meeting and decided to buy the shares of KBL. On July 28, 2010, the KG-MOB report for July was not yet in existence (it came into existence on August 06, 2010). Thus, none of the Noticees had insider information regarding the KBL financials of July 2010 or August 2010 or of full September 2010 quarter financials at the time that they took the decision to enter into the impugned transactions. Thus, I am of the view that there is no relevance of the alleged UPSI-2 to the determination of whether the Noticees had traded on the basis of UPSI-2 on October 06, 2010.

110. Lastly, I examine to the relevance of UPSI-2 in the context of the allegation of violation of PFUTP Regulations by Noticee No. 1 to 9. In this regard, I note that the allegation of fraudulent and unfair trade practices is in the context of the decision taken by the KIL Board, to purchase the shares of KBL from the promoters. This decision was taken on July 28, 2010 before the UPSI-2 came into existence. Thus, I find that there is no relevance of UPSI-2 in the context of PFUTP violations.

111. Thus, in view of the foregoing, I am of the view that the need does not arise to determine whether the financial information contained in the KG-MOB reports indicated deteriorating financials or otherwise.

`

112. ***Amount of unlawful gains / loss avoided: Estimation of impact of UPSI on share price in the context of (a) long UPSI period and (b) UPSI being related to one time loss or gain:***

112.1. The SCN-1 alleges that Noticee No. 1 to 6 by trading in the shares of KBL while in possession of UPSI-1, had made unlawful gains / loss avoided. The calculation of unlawful gains earned / loss avoided by the Noticee No. 1 to 6 as alleged in SCN-1 is as under:

Table No. 13

Sl. No.	Name	No of Shares Sold	Weighted average sale Price (Rs.)	Closing price on April 27, 2011 (Rs.) **	Unlawful Gain (Rs.) *
1	Alpana Rahul Kirloskar	19,49,900	256	178.30	15,15,07,230
2	Arti Atul Kirloskar	19,49,900	256	178.30	15,15,07,230
3	Jyotsna Gautam Kulkarni	19,49,900	256	178.30	15,15,07,230
4	Rahul Chandrakant Kirloskar	16,22,900	256	178.30	12,60,99,330
5	Atul Chandrakant Kirloskar	16,22,900	256	178.30	12,60,99,330
6	Gautam Achyut Kulkarni – Since deceased ***	16,22,900	256	178.30	12,60,99,330
** Basis of calculation-* *(No of shares sold when in possession of UPSI X weighted average sale price) – (No. of shares sold when in possession of UPSI X Closing price on the day of UPSI becoming public)*					
*** The announcement of the financial results for the quarter and year ended on March 31, 2011, in which advances given to KCEL was written-off (capital loss) was published on April 26, 2011 at 16:28 Hrs on BSE and at 16:15 Hrs on NSE. The closing price of scrip on April 27, 2011 i.e. Rs.178.30 at BSE is considered for computation of wrongful gains.*					
**** Gautam Achyut Kulkarni had passed away on September 20, 2017, and the legal representatives of Late Gautam Achyut Kulkarni are (i) Jyotsna Gautam Kulkarni, (ii) Nihal Gautam Kulkarni and (iii) Ambar Gautam Kulkarni.*					

112.2. With regard to the basis of calculation, Noticee No. 1 to 5 and LRs of Noticee No. 6 submitted that the price of KBL shares decreased from Rs. 256 on October 06, 2010 to about Rs. 154.35 on April 25, 2011 even prior to the information alleged to be UPSI was even published and such a downward movement cannot be attributed to the alleged UPSI. The impact of the information alleged to be UPSI on the share price therefore needs to be examined from the date on which such information was published (in this case April 26, 2011).

`

112.3. In this regard, it is noted that Noticee No. 1 to 6 had sold KBL shares on October 06, 2010 and information regarding Capital loss of the investment / advances given to the KCEL through writing off the loan / advances to the tune of Rs. 67.47 crore given to KCEL by KBL has been published on April 26, 2011. The price of the KBL shares on October 06, 2010 was Rs. 256 and on April 26, 2011 was Rs. 154. In this context, it is relevant to note that observation of *Karvy Stock Broking Ltd. vs. SEBI* made by Hon'ble SAT in its decision dated May 5, 2008 to the effect that disgorgement amount can be calculated on the basis of reasonable approximation. Hon'ble SAT in the said order further observed that *Disgorgement is a monetary equitable remedy that is designed to prevent a wrongdoer from unjustly enriching himself as a result of his illegal conduct.*

112.4. The allegation in the SCN for the calculation of loss avoided or unlawful/ill-gotten gain takes into account weighted average selling price on the date of sale and the closing price on the date of publication of the UPSI. In this regard, I note that the time difference between the two dates is approximately 6 months which is quite long. During this time, apart from the impact of UPSI-1 and UPSI-2 on the price of KBL shares, following amongst many others, may also be the factors which could results in the decline of price of KBL shares from Rs. 256 on October 06, 2010 to Rs. 154 on April 26, 2011.

- Macro-economic factors at the level of the Indian economy;
- Global and Domestic flows at the market level;
- Sectorial news flow;
- Various corporate announcements made by KBL during the 6 month period etc.

112.5. I also note that the price of KBL shares had fallen to Rs. 115.25 on March 16, 2011, i.e. well before April 26, 2011. Thus, I am in agreement with the Noticees that the entire decline in the KBL share price over a long period of 7 months cannot reasonably be attributed predominantly to the UPSI-1. Therefore, in respect of the method adopted in the SCN-1 for calculation of the avoidance of loss, I am of the considered view that the computation methodology in the SCN does not satisfy the requirement of reasonable approximation of the amount to be disgorged. Therefore, in view of the facts and circumstance of this case and the documents available on records, I am of the view, that using the computational methodology mentioned in

`

the SCN-1, would not be appropriate to reach a reasonable approximation of loss avoided or unlawful/ill-gotten gains made by the Noticee No. 1 to 6. Therefore, the question that arises is what would be a reasonable approximation of the unlawful gain/ loss avoided by the Noticee No. 1 to 6. This would involve "valuation" of KBL with and without the UPSI, assuming that the two are proximate to each other.

112.6. Before taking that up, I first take the liberty of drawing a broad analogy in respect of "valuation".

112.6.1. It may be assumed that Mr. X has bought a house at a value of Rs. 100 lacs with a bank loan of Rs. 75 lacs and his own funds (equity) of Rs 25 lacs. Assume that he has to pay interest on the loan @ 10% per annum for 15 years.

112.6.2. It may further be assumed that 2 months later, there is a fire in the house and a part of it is destroyed. Assume that, the cost of restoring the house to original status is Rs 10 lacs. As Mr. X did not take a fire insurance, assumes that he has to take an additional loan of Rs 10 lacs (to be paid at the end of 15 years) to carry out the repair.

112.6.3. In the Balance Sheet of Mr. X, what this means is that:

112.6.3.1. His asset of Rs 100 lacs first comes down by Rs 10 lacs (capital loss).

112.6.3.2. His liabilities remain at Rs 75 lacs of loan. His equity comes down by Rs 10 lacs to Rs 15 lacs.

112.6.3.3. In order to be able to live in the house again, Mr. X has to borrow a further Rs 10 lacs in addition to the outstanding loan of Rs 75 lacs, in order to restore the house.

112.6.3.4. After the repairs, the value of the house goes back to Rs 100 lacs.

112.6.3.5. But the liabilities become: Loan of Rs 85 lacs and equity of Rs 15 lacs.

112.6.3.6. In other words, the entire loss of Rs 10 lacs is to the account of the equity of Mr X. and this is reflected in his liability to the bank increasing by Rs 10 lacs

112.6.4. In the Profit and Loss of Mr X, what this means is that:

112.6.4.1. Originally he was to pay interest on the loan amount of Rs 75 lacs @10% i.e. Rs 7.5 lacs pa.

112.6.4.2. After the restoration, he now has to pay interest on the loan amount of Rs 85 lacs @ 10% i.e. Rs 8.5 lacs pa.

`

112.6.4.3. In other words, he has a recurring additional expense of Rs 1 lac per annum.

112.6.4.4. Thus over a period of 15 years of the loan, he will pay an extra Rs 15 lacs.

112.6.5. In other words, the " total loss of value" to Mr. X on account of the fire is the Rs 10 lacs extra loan that he will have to repay to the bank, plus, the extra Rs 15 lacs of interest that he will have to pay to the bank i.e. a total of Rs 25 lacs. It is of course, to be noted that the total of Rs 25 lacs is to be paid over a period of time, and therefore, the present value of loss would be lower.

112.6.6. Let also be assume that the bank agreed to make Mr. X's loan a life long loan and assume that Mr. X lived a long long time. The present value of the principal repayment would be very low low enough to be ignored and so the total effective loss of value to Mr. X would be a recurring cost of the increase in interest of Rs 1 lac per annum life long.

112.7. Similarly, in the present case, in order to make a reasonable approximation of the unlawful gain/loss avoided by the Noticee No. 1 to 6 in the peculiar set of facts and circumstances that present themselves in this case, I note the following :

112.7.1. KBL had made an investment/ advances of Rs 148 Crore in KCEL as per the Note dated March 08, 2010. (equivalent to the value of the house of Mr X of Rs 100 lacs)

112.7.2. The capital loss on this investment/ advances to KBL was estimated at Rs 53-Rs 58 Crore as per Note dated March 08, 2010 (take the midpoint value of Rs 55.5 Crore) (equivalent to the loss on account of the fire in the house, of Rs 10 lacs)

112.7.3. In order to maintain the expected revenues and profits of KBL (equivalent to Mr. X being able to continue to live in the house), KBL would have to restore the asset (equivalent to repairing the house) by borrowing an additional 55.5 Crore (equivalent to Mr. X taking an additional loan of Rs 10 lacs)

112.7.4. The average cost of borrowing for KBL was approximately 10% per annum (as per the Annual Report for FY 2009-2010) (Similar to Mr X's cost of borrowing of 10% per annum)

112.7.5. Thus, KBL would incur additional interest cost of Rs 5.55 Crore per annum (equivalent to Mr X paying Rs 1 lac per annum).

`

112.7.6. KBL was a ongoing concern and it can be assumed that the loan was "life long". Thus the impact of the loss was almost fully captured through the "recurring loss" of Rs 5.55 Crore per annum life long.

112.7.7. However, the capital loss on investment/advance given to KCEL which was estimated between Rs 53 Crore and Rs 58 Crore in March 2010 by the time the impugned transactions took place, i.e. on October 06, 2010, the estimate of the capital loss had increased to Rs 84.96 Cr as per the viability report considered by the Board of KBL on September 03, 2010.

112.7.8. Thus, before the impugned trades happened on October 06, 2010, if the capital loss had been made public, the amount of Rs 84.96 Cr would have been made public and would have had the related impact on the share price of KBL through a recurring loss of Rs. 8.49 crore per annum life long.

112.7.9. In the financial world, such a recurring cost to the company would be "valued" at the Price to Earnings Multiple (P/E).

112.7.10. P/E ratio calculation:

112.7.10.1. The impugned transaction took place on October 06, 2010, therefore, the computation of P/E ratio has to be of that date. It may be noted that Trailing Twelve Month (**TTM**) Ratio has been commonly used by the market which is to be computed.

112.7.10.2. As on October 06, 2010, the quarterly results for the quarter ended September 30, 2010 were not in public domain. The latest results in public domain were for the quarter ended June 30, 2010. Thus, financial results from July 1, 2009 to June 30, 2010 results should be used. I note that as per the submission of the Noticees, the PAT for the relevant 4 quarters was:

112.7.10.2.1. Quarter ended September 30, 2009:Rs 33.13 Crore

112.7.10.2.2. Quarter ended December 31, 2009: Rs 20.34 Crore

112.7.10.2.3. Quarter ended March 31, 2010: Rs 58.44 Crore including Rs 22.48 Crore one-time profit

112.7.10.2.4. Quarter ended June 30, 2010: Rs 4.46 Crore

112.7.10.3. Thus, total trailing twelve month PAT was Rs 116.37 Crore including Rs 22.48 Crore one time profit.

`

112.7.10.4. The market does not value one-time profit at the P/E ratio. Only sustainable profit/recurring profit is valued at the said ratio. Thus, it becomes important to convert the one time profit into its equivalent "recurring benefit", as outlined below:

112.7.10.4.1. Cash generated from the one-time sale of investments = Rs 22.48 Crore. Making a reasonable assumption of tax @ 10% on long term capital gains, net cash generated would be approx. Rs 20.2 Crore.

112.7.10.4.2. Average interest cost of KBL = interest for the year/ average debt during the year i.e. Rs 33.5 Crore / ((Rs. 357 Crore + Rs 320 Crore)/2) = 9.9 % or approximately 10%

112.7.10.4.3. Thus, if KBL were to repay borrowings to the extent of Rs 20.2 Crore using the net cash generated from the one-time sale of investments, it could save approximately Rs 2.02 Crore every year on a gross basis and thus increase its profits on a PBT basis by Rs 2.02 Crore. KBL paid approximately 32% tax in the FY 2009-2010. Thus, increase in profit on a PAT basis would be Rs 1.38 Crore per annum. The dividend lost on investments sold would be Rs 2.40 Crore

112.7.10.4.4. This sustainable PAT = Rs 116.37 Crore – Rs 20.2 Crore – Rs. 2.4 Crore + Rs 1.38 Crore = Rs 95.1 Crore.

112.7.10.4.5. Since KBL had 7.93 Crore shares outstanding, the sustainable PAT per share would be Rs 12.

112.7.10.4.6. The market price of KBL shares on October 06, 2010 was Rs 256. Thus, the implied P/E ratio that the market was valuing KBL at was Rs 256 / Rs 12 i.e. 21.3.

112.7.11. For easy reference, the aforesaid calculation is tabulated below in detail:

`

Table No. 14

Trailing Twelve Month (TTM) ended June 30, 2010				
		PAT in Rs Cr		
Q ended sept 2009	A	33.13		
Q ended dec 2009	B	20.34		
Q ended mar 2010	C	58.44	including one time profit of Rs 22.48 Crore	
Q ended jun 2010	D	4.46		
Total TTM	E	116.37		E=A+B+C+D
PAT	E	116.37		
One time profit in march quarter	F	22.48		
Tax @10 % (assuming long term investment)	G	2.25	10%	
One time profit on PAT basis	H	20.2		H=F-G
Interest saving (recurring benefit) pre tax (@10 %)	I	2.02	10%	
Tax rate	J	32%		
Recurring benefit post tax	K	1.38	per annum	
Dividend lost on investments sold	L	2.40	Crore	
Recurring PAT	M	95.1	Crore	M=E-H-L+K
Number of shares	N	7.93	Crore	
Recurring PAT per share	O	12.0		O=M/N
Share price	P	256	on 06.10.2010	
P/E	Q	21.3		Q=P/O
Capital loss (KCEL related) estimate increased from March 2010 (Rs 55.5 Cr) to Sept 3, 2010 (84.96 Cr)	R	84.96	Crore	
Recurring impact on PBT (interest on additional borrowing)	S	8.50	Crore	S=10%*R
Tax benefit	T	2.72	Crore	T=S*J
Recurring impact on PAT	U	5.78	Crore	U=S-T
Recurring impact on PAT per share	V	0.73	Rs	V=U/N
Impact on value per share (based on P/E)	W	15.5	Rs/share	W=V*Q
Total number of shares traded	X	1,07,18,400		
Loss avoided (in Rs.)	Y	16.61	Crore	Y=X*W

112.7.12. Thus, from the above table the valuation of loss would be Rs 15.5/- per share.

112.8. While financial experts may offer refinements to the above logic, in my opinion, the same is reasonable and thus, a reasonable approximation of the notional loss avoided / unlawful gains made by the Noticee No. 1 to 6 by selling the KBL shares

`

on October 06, 2010 which is approximately Rs. 16.61 Crore. The details in this regard is mentioned below:

Table No. 15

Sl. No.	Name	No of Shares Sold	Unlawful / illegal loss avoided per share (Rs.)	Notional Unlawful / illgoten Gain (Rs.) *
1	Alpana Rahul Kirloskar	19,49,900	15.5	**3,02,23,450**
2	Arti Atul Kirloskar	19,49,900	15.5	**3,02,23,450**
3	Jyotsna Gautam Kulkarni	19,49,900	15.5	**3,02,23,450**
4	Rahul Chandrakant Kirloskar	16,22,900	15.5	**2,51,54,950**
5	Atul Chandrakant Kirloskar	16,22,900	15.5	**2,51,54,950**
6	Gautam Achyut Kulkarni – Since deceased ***	16,22,900	15.5	**2,51,54,950**
	Total			**16,61,35,200**
** Basis of calculation of unlawful loss avoided = (No. of shares sold when in possession of UPSI X unlawful / illegal loss avoided per shares as per abovementioned calculation)*				
**** Gautam Achyut Kulkarni had passed away on September 20, 2017, and the legal representatives of Late Gautam Achyut Kulkarni are (i) Jyotsna Gautam Kulkarni, (ii) Nihal Gautam Kulkarni and (iii) Ambar Gautam Kulkarni.*				

ISSUE No. 2: Whether Noticee No. 5, 7, 8 & 9 together with Noticee No. 1 to 6 had committed fraud on KIL and public shareholders (i.e. minority shareholders) of KIL and thereby violated the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) PFUTP Regulations as alleged in the respective SCN?

113. I note that the basis of allegation against No, 5, 7, 8 & 9 (directors of KIL) is that before the KIL board meeting on July 28, 2010 (wherein the decision to buy KBL shares from Promoter/directors of KBL was taken by KIL), Noticee No, 5, 7, 8 & 9 (directors of KIL) were aware of the precarious financial condition of KCEL & its impact on the financials of KBL in terms of capital loss (UPSI-1) and yet they induced KIL to buy shares of KBL from Noticee No. 1 to 6 (promoter / director of KBL as well as of KIL). Thus, it is alleged that Noticee No, 5, 7, 8 & 9 had aided Noticee No. 1 to 6 in selling their shares of KBL to KIL to the detriment / disadvantage of KIL. Therefore, Noticee No, 5, 7, 8 & 9 together

`

with Noticee No. 1 to 6 had allegedly committed fraud on KIL and public / minority shareholders of KIL.

Sub-Issue No. 2.1 *Whether Noticee No. 7 to 9 and Noticee No. 1 to 6 had knowledge of and were aware of UPSI-1 prior to July 28, 2010?*

114. In this regard, it may be noted that the precarious financial condition of KCEL formed the basis of UPSI-1. I have already, at sub-issue 1.2 & 1.3 above in this order, given the finding in detail, that, prior to July 28, 2010, Noticee No. 4, 5, 6, and 9 had knowledge of and were aware of UPSI-1 (i.e. information of capital loss between Rs. 53 crore to Rs. 58 crore).

115. From the documents available on records, following connections are noted between Noticee No. 1 to 9 among themselves, and vis-à-vis KBL and KIL.

Table No. 16

Sr. No.	Name	Relation with other Noticee	Designation in KBL	Designation in KIL
1	Alpana (Noticee No. 1)	Wife of Rahul (Noticee No. 4)	Promoter	Promoter
2	Arti (Noticee No. 2)	Wife of Atul (Noticee No. 5)	Promoter	Promoter
3	Jyotsna (Noticee No. 3)	Wife of Gautam (Notice No. 6)	Promoter	Promoter
4	Rahul (Noticee No. 4)	Brother of Atul (Noticee No. 5)	Promoter / Director	Promoter
5	Atul (Noticee No. 5)	Brother of Rahul (Noticee No. 4)	Promoter	Promoter / Director
6	Gautam (Notice No. 6)	-	Promoter / Director	Promoter / Director
7	Nihal (Noticee No. 7)	Son of Gautam (Notice No. 6)		Promoter / Director
8	Sathe (Noticee No. 8)*	-	CFO till June 09, 2010	Director
9	Alawani (Noticee No. 9)	-	Director	Director

*Managing Director of KCEL from June 10, 2010

116. From the above table, I note that Noticee No. 1, 2 & 3 are wives of Noticee No. 4, 5 & 6 respectively and Noticee No. 7 is the son of Noticee No. 6. Further, in this regard, reliance is placed on the judgment of Hon'ble SAT in the matter of *Poonam Garg vs SEBI* decided on March 22, 2018 referred at paragraph 34 above. Thus, by virtue of their close

`

connection with Noticee No. 4, 5, & 6, I am of the view that on preponderance of probability basis, Noticee No. 1, 2, 3 & 7 also had knowledge of and were aware of UPSI-1 prior to July 28, 2010.

117. Noticee No. 8 submitted that he was CFO of KBL till June 9, 2010; he was deputed to be the Managing Director of KCEL from 2010 onward; and that the mere fact that he was a CFO of KBL till 2010 or that he was MD of KCEL during relevant time, does not point to the assumption that the he was aware of the fact of alleged financial weakness and that the Loans advanced to KCEL were to be written off by KBL in March 2011 i.e. almost one year after he resigned from KBL.

118. With regard to Noticee No. 8, from the documents available on record, I note that a detailed NOTE considering the performance and strategic options for KCEL was attached to the agenda of the board meeting of KBL held on dated March 08, 2010. The said note stated that KBL w.r.t KCEL would incur a one time capital loss of about Rs.53 crore to Rs.58 crore. Further, from the agenda of the Board meeting dated March 08, 2010, I also note that Mr. A.R. Sathe (Notice No.8) was CFO of KBL at the relevant time and made a presentation to the board of KBL on financials (Annual Operating Plan) of KBL. Further, I note that Noticee No. 8 was MD of KCEL during relevant time i.e. with effect from June 10, 2010 and was well aware about the financial stress of KCEL. I also note that the Noticee No. 8 had incorrectly interpreted UPSI-1 as the writing-off of loans rather than information on Capital loss as explained in sub-issue 1.2 above. Thus, I am of the view that prior to July 28, 2010, Noticee No. 8 had knowledge of and was aware of UPSI-1.

119. Also it is already found at sub-issue 1.2 & 1.3 above that Noticees 1-6 and Noticee 9 were already having UPSI-1 prior to July 28, 2010. Thus, on the basis of above connections and considering the note attached to the agenda of board meeting of KBL held on March 08, 2010, I am of the view that Noticee No. 5, 7, 8 & 9 as well as Noticee No. 1 to 6 had knowledge of UPSI-1 (i.e. information of capital loss of about Rs. 53 crore to Rs. 58 crore) prior to July 28, 2010.

`

Sub Issue 2.2: *Whether Noticee No. 5, 7, 8 & 9 had induced KIL to purchase the shares of KBL from Noticee No. 1 to 6 and thereby aided Noticee No. 1 to 6 to sell their shares of KBL to KIL to the detriment of KIL?*

Sub Issue 2.3: *Whether Noticee No. 5, 7, 8 & 9 together with Noticee No. 1 to 6 had acted unfairly / committed fraud on KIL and public shareholders (i.e. minority shareholders) of KIL?*

120. I note that KIL board meeting held on July 28, 2010 was attended by 5 directors of KIL (including Noticee 5, 7, 8, & 9). The proposal to invest surplus funds in the shares of KBL by purchasing the shares of KBL from Noticee No.1 to 6 was presented by the Noticee No. 5. Noticee No. 5 being a seller and Noticee No. 7 being the son of Noticee No. 6 (a seller) had recused themselves on account of being interested parties i.e. out of 5 directors, 2 directors had recused from participation / discussion on said proposal and thereby did not vote on the said proposal. Noticee No. 8 chaired the meeting in respect of the said proposal. Noticee 8, 9 and director Mr. Vijay K. Bajhal participated, discussed and voted for the said proposal and thereafter decided that KIL shall purchase the shares from Noticee No. 1 to 6 to the tune of Rs. 275 crores at the prevailing market price.

121. At the time of KIL board meeting held on July 28, 2010, I note that UPSI-1 was available with 4 directors out of 5 directors of KIL i.e. only director Mr. Vijay K. Bajhal was not aware of the UPSI-1. I note that Noticee No. 5 & 7 had recused themselves from participation / discussion on said proposal. Noticee No. 8 & 9 while discharging their duty as directors of KIL, despite knowing about the capital loss of investment/advance which would have an adverse effect on the share price of KBL (whenever it was made public), induced the corporate body KIL (in which minority shareholders held approximately 35%) to decide to buy the shares of KBL from Noticee No.1 to 6 at a time when it was detrimental to the interest of shareholders of KIL. In this manner, minority shareholders were treated unfairly in a fraudulent manner.

122. With regard to *"unfair trade practice"*, Hon'ble Supreme Court in the matter of *Kanaiyalal Baldev Bhai Patel v. SEBI [(2017) 143 SCL 124 (SC)]* have observed that *"Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade*

`

practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover the concept of 'unfairness' appears to be broader than and includes the concept of 'deception' or 'fraud'.

123. Noticee argued that in the present case, Section 372A of the Companies Act, 1956 permits the company to use 60% of its paid capital and free reserves or 100% of its free reserves, whichever is more, to acquire the shares of any other body corporate. There is no allegation that KIL acquired the shares in breach of Section 372A of the Companies Act, 1956. It was further argued that what is permissible by law cannot therefore, be a device, scheme or artifice which is fraudulent within the meaning of Regulation 2(1)(c) of PFUTP Regulations. The argument of the Noticee in this regard cannot be accepted. The basis of the argument that what is permissible by law cannot be fraud. I note that while the law permits certain activity, the said activity has to be performed as permitted by law. The PFUTP Regulations prohibits also the permissible activity if done in fraudulent manner. For instance, dealing in securities is permissible. However, the fraudulent dealing in securities is not. The permissible activity cannot be performed for commission of fraud. In the instant case, the permissible activity of investment is prevented as the same is done in possession of the non-public information of capital loss. Hence, the contention is not acceptable.

124. Further, I am of the view that board of directors are vested with the widest powers to make corporate policy, take decisions on investments, appointments of directors etc. if they find that such action is for the benefit of and in the interest of the company (which also involve the interest of the minority shareholders) and such powers are to be discharged in good faith. Further, directors perform functions similar to trustees in respect of the assets of the company as well. If an action / decision was not taken in good faith and / or not for the benefit of / in interest of the company, then the director, is liable for inducing the company to act to its own detriment and also liable for treating minority shareholders in an unfair manner.

`

125. In light of the above, in the present matter, the question arises whether in KIL board meeting held on July 28, 2010, the decision taken by the Board of Directors to buy the shares of KBL from the promoters was for the benefit of and in the interest of KIL and its minority shareholder or not. In this regard, I note that surplus funds to the tune of Rs 275 crore which was approximately 57.47% of the total networth (Rs. 478.65 crore) as on March 31, 2010 and 64.61% of KIL's total investment as on March 31, 2010 (Rs. 425.61 crore) was invested in the shares of KBL i.e. more than 50 % of KIL networth and investment was invested in KBL shares. Therefore, such investment has to be for the benefit and in the interest of KIL. As major investment of KIL would be in KBL, therefore, the price of the shares of KIL would also be dependent upon the price of shares of KBL. Due to the increase or decrease in price of shares of KBL, the value of investment of KIL in KBL would also increase or decrease. The said increase or reduction in the value of investment of KIL in KBL would also have an impact on the price of KIL shares i.e. the price of KIL shares would also go up or down. The price of KBL shares vis-à-vis KIL shares on relevant date at BSE and NSE is as under:

Table No. 17

Date	Closing Price (Rs.) of KBL Shares		Closing Price (Rs.) of KIL Shares		Events
	BSE	NSE	BSE	NSE	
27-Jul-10	272.15	274.35	373.45	372.8	KBL Board Meeting and declaration of financial results of June 2010 quarter
28-Jul-10	265.25	262.3	367.05	366.75	KIL Board Meeting, wherein decision to invest in KBL shares was taken
06-Oct-10	254.5	255.2	352.55	351.4	KIL bought shares of KBL from Noticee No. 1 to 6

126. Thus, looking into the above price movement of KBL shares vis-à-vis KIL shares, I note that as the price of KBL shares was going down, the price of KIL shares was also going down in tendem. This further confirms that price movement of KIL shares is dependent upon the price movement of KBL shares. Therefore, I am of the view that the investment by KIL in KBL shares at a time when significant capital loss was expected in KBL was not for the benefit of and not in the interest of KIL, especially not in the interest on minority shareholders of KIL.

127. Some of the Noticees have argued that it was the mandate of KIL to make investment in Kirloskar group companies. I note from the annual report of KIL for FY 2010, that pursuant

`

to a scheme of arrangement, the components business of KIL was demerged with retrospective effect from April 01, 2009, leaving KIL with windmill and investment operations. KIL disclosed in its annual report of FY 2011 that it qualified as a core investment company as per RBI Regulations. Thus, even if, one were to accept the thesis, that it was the mandate of KIL to make investments in Kirloskar Group Companies, nothing prevented the directors of KIL to act in the interest of its shareholders (including minority shareholders) and decide that the investment in KBL shares would be done only after all price sensitive information relating to KBL is made public and the impact of such UPSI is fully reflected on share price of KBL. Instead, directors of KIL chose to leave the timing of the transaction to the promoters of KBL and the said promoters effected the transaction before making the UPSI public, which was 'accepted' by the directors of KIL.

128. Such investment by KIL in KBL had provided an exit to Noticee No. 1 to 6 (promoter / director of KBL as well as of KIL) from KBL at the cost of minority shareholders of KIL. Thus, by leaving the timing of the transaction to the promoters and not insisting on all UPSI to be disclosed before executing the trade, the directors of KIL acted in the interest of Noticee No. 1 to 6 but not in the interest of KIL. Therefore, I am of the view that such action / decision taken by KIL was not taken in good faith and was taken to suit Noticee No. 1 to 6 (promoter / director of KBL) leaving them to decide a time favorable to them.

129. Noticee No. 1 to 6 have argued that while they sold shares of KBL to KIL, they later increased their holdings in KIL from 15 % to 72% (by April 23, 2014). However, I note that Noticee No. 1 to 6 had substantially increased their holdings in KIL from 15 % (in October 2010) to 62% (in May 2011) i.e. only subsequent to the KBL disclosure of capital loss of approx. Rs. 67 crore due to write off of loans / advances made on April 26, 2011. Thus, I note that while they sold KBL shares to KIL in October 2010, before making the UPSI-1 public, they consolidated their shareholding in KIL only in May 2011 i.e. after making the UPSI-1 public. I also note that the Noticee No. 1 to 6 have offered no explanation for why they waited 7 long months to consolidate their shareholdings in KIL as per the family consolidation as argued by them.

130. Thus, in view of the above, the decision of directors of KIL to invest in the shares of KBL knowing of the capital loss on investment/advance, which has the likelihood of affecting

`

the share price of KBL cannot qualify as a decision taken in good faith. Decision of directors of KIL to invest in KBL shares, leaving the timing to the promoters and without insisting on disclosure of UPSI, was not for the benefit of and also not in interest of KIL, but was only for the benefit and interest of Noticee No. 1 to 6. As such, KIL as a corporate body which also represents minority shareholders, has been induced to buy shares of KBL, which, in terms of timing was detrimental to the interest of KIL. Hence, this amounts to fraud and unfair practice by the directors of KIL and unfair treatment to the minority shareholders of KIL in a fraudulent manner. Noticees have submitted that subsequently the share price of KBL went up, resulting in gains to KIL. However, the commission of fraud / unfair dealings does not stand mitigated by subsequent events like the price movement of KBL which might / or might not have turned out to be beneficial to KIL.

131. I note that Noticee No. 5 and 7 did not participate or vote in the decision of KIL to buy shares of KBL from Noticee No. 1 to 6 while Noticee No. 9 participated in the meeting and Noticee No. 8 had chaired the said board meeting of KIL. I note that as directors, Noticee No. 5, 7, 8 and 9 had the duty to act in good faith and with due diligence in the performance of their duties in the interest of KIL, keeping in mind the interest of its shareholders, including the minority shareholders. Noticee No. 5, 7, 8 and 9 had the non-public information of capital loss. Noticee No. 5 & 7 by merely recusing themselves from the said proposal, on the ground that they are interested parties, have failed in their duty of good faith and due diligence towards KIL when dealing in securities. I note that "dealing in securities" includes "otherwise dealing in securities" in terms of the decision to deal with securities. Dealing in securities while on possession of non-public information is prevented under PFUTP Regulations. When a fraudulent act in terms of the law is to be prevented, by virtue of abstaining from taking steps to prevent the fraudulent act, it results in conscious abdication of the responsibility of taking due diligent steps to prevent the commission of fraud. There is no evidence of Noticee No. 5 and 7 taking any such due diligent steps. Added to this, Noticee No. 5 by virtue of his act of commission of floating the proposal in the first place to buy the shares from Noticee No. 1 to 6 and Noticee No. 9 taking part in the deliberations, have conducted themselves in a manner that facilitated the commission of fraud / unfair trade practice on KIL, especially on the minority shareholders. Therefore, I find that being in possession of the non-public information of capital loss, Noticee No. 5 and 7 omitted to take due diligent steps to prevent the commission of fraud / unfair trade

`

practice and Noticee No. 5 also did the positive act of floating the proposal towards the commission of unfair trade practice. Noitcee No. 8 chaired the meeting and Noticee No. 9 participated in deliberations. Therefore, by virtue of the above omissions and commissions, Noticee No. 5, 7, 8, & 9 have undermined the ethical standards and good faith dealings between parties engaged in business transactions and thus had caused unfair treatment to the minority shareholders of KIL in a fraudulent manner. It is noted that though Noticee No. 9 is non-executive independent director, the same does not have any bearing to the present allegations, as it has already been determined that Noticee no. 9 had access to UPSI-1 and he had direct role of participating in KIL board meeting while in possession of such non-public information leading to the inducement of KIL to buy shares of KBL.

132. Therefore, while possessing the non- public information as to the capital loss, Noticee No. 1 to 9 undermined the ethical standards and good faith dealings between parties engaged in business transactions. Therefore, I consider that at a time when the non-public information was possessed by Noticee No. 1 to 9 they were prevented by Regulations 3 and 4(1) of PFUTP Regulations, from dealing in securities in a fraudulent manner and indulging in unfair trade practice as explained above.

133. It may be noted section 12A(e) of the SEBI Act prevents any person from dealing in securities if they possess any of the two categories of information, that is material information or non-public information in the manner prohibited by any of Regulations. There may be cases where non-public information may also be price sensitive. In those cases, the Insider Trading Regulations prevents dealing in securities with the unpublished price sensitive information. Similarly, fraudulent dealing in securities with non-public information is prevented by PFUTP Regulations as well. At this stage, the need arises to stress two different aspect of, dealing in securities while in possession the non-public information / material information. Dealing in securities while in possession of the non-public information / material information, undermining the ethical standards and good faith dealings between parties engaged in business transactions, is unfair trade practice prevented under PFUTP Regulations. Dealing while in possession of price sensitive non-public information / material information by itself is prevented under the PIT Regulations, 1992.

`

134. Therefore, in view of the foregoing, I am of the view that directors of KIL i.e. Noticee No. 5, 7, 8, & 9 had through act of omission and commission, induced KIL to buy shares from Noticee No. 1 to 6, and thereby aided Noticee 1 to 6 to sell the shares of KBL to KIL to the detriment of KIL at least in terms of timing of the trade in KBL shares (before public disclosure of UPSI). Thus, Noticee No. 1 to 9 had caused unfair treatment to the minority shareholders of KIL in a fraudulent manner and violated the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) PFUTP Regulations as alleged in the respective SCN. Hence, the violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) PFUTP Regulations as alleged in the respective SCNs against Noticee No. 1 to 9 stand established.

ISSUE No. 3: ***Whether Noticee No. 1, 3 and 4 had violated clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of PIT Regulations 1992 as alleged in the respective SCN?***

135. From the documents available on record, I note that Noticee No. 1, 3, 4 and 6 vide letters dated September 28, 2010, had sought pre-clearance for trading, from KBL while giving a declaration that they have no access to Unpublished Price Sensitive Information upto the signing of the undertaking. I note that the said Noticees have not disputed that said letters / undertaking dated September 28, 2010 rather had submitted that said pre-clearance was sought in a bonafide manner believing that they were not in possession on any UPSI at that time.

136. They further submitted that the compliance officer of KBL has erred in granting the pre-clearance to the said Noticees. In this regard, upon perusal of SCN-1, I note that the question of determination whether the compliance officer of KBL has erred in granting the pre-clearance does not arise as the same is not part of the allegation in the show cause notice.

137. I have already determined in detail in the previous paragraphs, Noticee No. 1, 3 and 4 were in possession of UPSI-1 and UPSI-2 when they had applied for pre-clearances on September 28, 2010 i.e. prior to the transaction dated October 06, 2010. In respect of the

`

pre-clearance, it was argued by the Noticees, that the trades were done while the trading window was open and trades were done with the persons having the same UPSI. The said argument has no relevance on the allegation of whether pre-clearance with the true undertaking was made and obtained. What is relevant in the instant case for determination of violation of code of conduct relating to pre-clearance is whether the said application for pre-clearance was made at time when the applicant does not have the UPSI and an undertaking to that effect was given for application to get the pre-clearance. As already observed, the Noticees No. 1, 3 and 4 were in possession of UPSI at time of undertaking and hence the undertaking was false. The objective behind the pre-clearance is transaction beyond a certain threshold should not be executed by directors/officers/designated employees the concerned company even when the trading window was open unless they get the pre-clearance. The requirement is not dispensed with because any of the counterparties to the trade has the same UPSI.

138. Thus, I am of the view that Noticee No. 1, 3 and 4 had submitted incorrect declarations / undertakings dated September 28, 2010 to KBL while obtaining pre-clearances for transaction dated October 06, 2010 and therefore, violated Part A, of clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of PIT Regulations 1992. Hence, the violation of provisions of Part A, of clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of PIT Regulations 1992 against Noticee No. 1, 3 and 4 stands established.

<u>ISSUE No.4:</u> Whether proceedings for disgorgement for unlawful gains / loss avoided by Noticee No. 6 while trading in the shares of KBL can be initiated against LRs of Noticee No. 6 under Section 28B read with sections 11(1) and 11B(1) of SEBI Act, 1992?

139. I note that Noticee No. 6 viz. Gautam Achyut Kulkarni had passed away on September 20, 2017 i.e. before the initiation of these proceedings. As per Section 28B of SEBI Act, 1992, any proceeding for disgorgement which could have been initiated against the deceased if he had survived, may be initiated against the legal representatives of deceased. Therefore, vide SCN-1 dated December 10, 2019, LRs of Noticee No.6 were show caused as to why direction for disgorgement of the loss avoided by Late Gautam Achyut Kulkarni (Noticee

`

No.6) be not issued against them under sections 11(1) and 11B(1) of SEBI Act, 1992 for the alleged violation by Noticee No. 6.

140. The question that arises in the present matter is whether, in view of the death of Mr. Gautam Achyut Kulkarni, the present proceedings against Mr. Gautam Achyut Kulkarni, would continue or abate.

141. It may be noted that the before the introduction of section 28B of the SEBI Act, 1992 on March 08, 2019, as special law the liability of the legal representatives for the deceased person was covered in section 306 of the Indian Succession Act as general law.

142. The first question that arises now, is whether, under the general law codified in Section 306 of the Indian succession Act, liability to pay the illegal gains is personal or not. In this regard, on the question of which causes of action survive and which abate, the Hon'ble Supreme Court (SC) in *Melepurath Sankunni Ezhuthassan Vs Thekittil Gopalankutty Nair*, (1986 AIR 411) observed as follows:-

> *"……So far as this country is concerned, which causes of action survive and which abate is laid down in section 306 of the Indian Succession Act, 1925, which provides as follows :*
>
> > *306. Demands and rights of action of or against deceased survive to and against executor or administrator. -*
> > *All demands whatsoever and all rights to prosecute or defend any action or special processing existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory……*
>
> *……Section 306 further speaks only of executors and administrators but on principle the same position must necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in better or worse position than executors and administrators and what applies to executors and administrators will apply to other legal representatives also."*

143. In an earlier judgment in *Girijanandini Vs Bijendra Narain* [1967 SCR (1) 93], Hon'ble Supreme Court observed that *"……The maxim* ***'actio personalis moritur cum persona'*** -

`

a personal action dies with the person has a limited application. It operates in a limited class of actions ex delicto such as actions for damages for defamation, assault or other personal injuries not causing the death of the party……".

144. The Hon'ble Supreme Court had another occasion to deal with the meaning of the words *"other personal injuries not causing the death of the party"* in *M. Veerappa Vs Evelyn Sequeira & Ors* (1988 AIR 506). In the said case it made a reference to the Full Bench decision of the Madras High Court in *Rustomji Dorabji v. W.H. Nurse, (1921) ILR 44 Mad 357* Coutts Trotter, J. wherein speaking for himself and Ayling, J. set out the law as follows.

> *"We are therefore driven to the conclusion that the Act must be supposed to have envisaged a logically coherent class of causes of action, and that result can only be achieved by construing 'personal injuries' as meaning not 'injuries to the body' merely, but injuries to the person in Blackstone's sense, other than those which either cause death or tangible affect the estate of the deceased injured person or* ***cause an accretion to the estate of the deceased wrong doer****. In effect, we think that the words which we have to construe are ejusdem generis not merely with the last preceding word 'assault', but with the two preceding words 'defamation' and 'assault'"*

In its concluding remarks, the Hon'ble Supreme Court in *M. Veerappa vs Evelyn Sequeira & Ors*, (1988 AIR 506) observed that *".....Thus it may be seen that there is unanimity of view among many High Courts in the country regarding the interpretation to be given to the words 'other personal injuries not causing the death of the party' occurring in Section 306 of the Indian Succession Act and that the contrary view taken by the Calcutta & Rangoon High Courts in the solitary cases referred to above has not commended itself for acceptance to any of the other High Courts. The preponderant view taken by several High Courts has found acceptance with this Court in its decision in Melepurath Sankunni Ezhuthassan's case....."*

145. In subsequent case of *Smt. Yallawwa Vs. Smt. Shantavva* on October 08, 1996, **(**MANU/SC/0016/1997**)** the Hon'ble Supreme Court endorsed its earlier view and held that *"……Save and except the personal cause of action which dies with the deceased on the principal of 'actio personal is moritur cum persona,' i.e. a personal cause of action dies with the person,* ***all the rest of causes of action which have impact on proprietary rights*** *and socio legal status of the parties cannot be said to have died with such a person……"*

`

146. Further, Section 306 of the Indian Succession Act, 1925, refers to "*All demands whatsoever and all rights to prosecute or defend any action or special proceeding*" for the purpose of stipulating those cases covered in Section 306, which survive the death of the person and carves out two exceptions of cases which do not so survive the death of the persons. The first exception is cause of action of defamation, assault, as defined in the Indian Penal Code, 1860 or other personal injuries not causing the death of the party. The second exception is cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory. Once those category of cases are exempted, the sweep of section 306 of Succession Act is broad and covers "*all demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease*". The inclusion of the word '*special proceedings'* further reiterates the applicability of the provisions to liability of the nature enforced or defended in the present proceedings.

147. There is yet another reason to hold that Section 306 of the Succession Act is applicable in the present case. Perusal of Section 32 of SEBI Act, 1992 states that the provisions of SEBI Act, 1992 is in addition to provisions of any other law for the time being in force. The provisions of the Section 306 of the Succession Act are "*any other law for the time being in force*". Therefore, I hold that principles embodied in Section 306 of the Indian Succession Act as general law are applicable to the present proceedings.

148. The consequences of the present violations of insider trading have resulted in unlawful gain / avoidance of loss and consequent accretions of property and the same becomes a part of the estate of the deceased. The said unlawful gain / avoidance of loss are liable to be disgorged, and thus the cause of action / disgorgement of such unlawful gains survives the death of Mr. Gautam Achyut Kulkarni as the proceedings are relating to property and not in respect of the personal cause of action against the deceased. Therefore, I am of the view that the proceedings against Late Mr. Gautam Achyut Kulkarni are not liable to be abated and the same survives his death under the general law itself.

149. Thus, I am of the view that even before insertion of Section 28B of SEBI Act, 1992, SEBI had the power to initiate disgorgement proceedings against the LRs of Noticee No. 6 as per

`

Section 306 of the Succession Act read with Section 32 of SEBI Act, 1992 and Sections 11 and 11B of SEBI Act, 1992.

150. The essence of the argument is there should have been an order of disgorgement crystalizing the liability to pay the sum has been passed against the deceased persons while they are alive and in other cases no such liability on the legal representatives. Under the general law, there is no requirement that the order of disgorgement has to be passed before the demise of the diseased person in order to attract the general law. Under the special law as well, there is no such requirement. Section 28B(1) provides for the LRs of the deceased person to pay any sum which the deceased would have been liable to pay.

151. In this regard, the perusal of Section 28B(2) of SEBI Act, 1992 shows that for the purpose of the liability of legal representatives, a deeming provision is created, in respect of the proceedings initiated before the death of the deceased. The deeming provision in Section in 28B(2)(a) of SEBI Act, 1992 has the effect as if the proceedings were initiated against the LR, though in fact it was initiated against the deceased and will be continued against the Legal Representative.

152. Section 28B(2)(b) of SEBI Act, 1992 does not have a similar deeming provision because it deals with a situation when proceedings such as disgorgement proceedings are initiated in the first place itself, against legal representatives. The argument of LRs of Noticee No. 6 runs counter to Section 28B(2)(b) of SEBI Act, which permits proceedings for disgorgement to be initiated and continued for crystalizing liability of the deceased (represented by the legal representatives). Therefore, I do not find any merit in the argument of LRs of Noticee No. 6. In this regard the reliance on Hon'ble SAT order in the matter of *Shailesh S. Jhaveri v. SEBI* dated October, 4, 2012, wherein Hon'ble SAT examined the meaning of "disgorgement" is not applicable to the facts of this case, as the said order of Hon'ble SAT order is not in respect of liability of legal representatives for the disgorgement amount.

153. As observed earlier, Section 28B(2) of SEBI Act, 1992 enables SEBI to initiate action for disgorgement against the legal representatives after the death of the deceased. As per the aforesaid legal provisions, in conjunction with general law, and case laws cited above, I am

`

of the view that proceeding for disgorgement for unlawful gains / loss avoided by Late Noticee No. 6 survives his death. Therefore, proceeding for disgorgement can be initiated against LRs of Noticee No. 6 and they are liable to pay the disgorgement amount, if any, under Sections 11(1) and 11B (1) of SEBI Act, 1992.

ISSUE No.5: If issue No. 1, 2, 3 & 4 is determined in affirmative in full or in part, then whether any directions including disgorgement under Sections 11(1), 11(4), 11B(1) of SEBI Act, 1992 and/or monetary penalty under Sections 15G, 15HA and 15HB of SEBI Act, 1992 should be issued / imposed against the respective Noticees / LRs of Noticees for their respective violations?

154. I note that Noticee No. 1 to 6, by trading in the shares of KBL, while in possession of UPSI-1, had made notional unlawful gains / avoided loss. The calculation of notional unlawful gains earned / loss avoided by the Noticee No. 1 to 6 is detailed at Paragraph 112 above. The amount of notional unlawful gains made / loss avoided by Noticee No. 1 to 6 is liable to be disgorged and the same is as under:

Table No. 18

Noticee No.	Noticee Name	Unlawful / ill-gotten Gain (Rs.)
1	Alpana Rahul Kirloskar	**3,02,23,450**
2	Arti Atul Kirloskar	**3,02,23,450**
3	Jyotsna Gautam Kulkarni	**3,02,23,450**
4	Rahul Chandrakant Kirloskar	**2,51,54,950**
5	Atul Chandrakant Kirloskar	**2,51,54,950**
6	Gautam Achyut Kulkarni – Since deceased *	**2,51,54,950**
	Total	**16,61,35,200**
**Gautam Achyut Kulkarni had passed away on September 20, 2017, the legal representative of Late Gautam Achyut Kulkarni are (i) Jyotsna Gautam Kulkarni, (ii) Nihal Gautam Kulkarni and (iii) Ambar Gautam Kulkarni.*		

155. Further, I note that the Hon'ble Supreme Court of India in the matter of *The Chairman, Sebi vs Shriram Mutual Fund & Anr* decided on 23 May, 2006 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 Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the*

`

Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.....Hence once the contravention is established then the penalty is to follow".

156. The provisions of Sections 15HA and 15HB of SEBI Act, 1992 as applicable at the time of transaction dated October 06, 2010 are as under:

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*"

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

157. Further, it is noted that Noticee No. 6 died on September 20, 2017 and imposition of penalty is a personal action which terminates with the death of person. Hence, I am of the view that no penalty can be imposed on Noticee No. 6.

158. Thus, in view of above Hon'ble Supreme Court order read with provisions of Sections 15HA and 15HB of SEBI Act, 1992, I am of the view that Noticee No. 1 to 5, 7, 8 & 9 are liable for monetary penalty for their violations as established above. In this regard, I note that:

158.1. the directors of KIL i.e. Noticee No. 5, 7, 8 & 9 had induced KIL to buy shares from Noticee No. 1 to 6 and thereby aided Noticee 1 to 6 to sell the shares of KBL to KIL at a time disadvantageous to KIL and its minority shareholders. Thus, Noticee No. 1 to 9 had caused unfair treatment to the minority shareholders of KIL in a fraudulent manner and violated the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) PFUTP Regulations. The violation of the said provisions of SEBI Acts and PFUTP Regulations by Noticee No. 1 to 9 except Noticee No. 6 attracts imposition of monetary penalty under section 15HA of SEBI Act on them.

`

158.2. Noticee No. 1, 3 and 4 had submitted incorrect declarations / undertakings dated September 28, 2010 by stating that they are not in possession of UPSI-1 and UPSI-2 to KBL while obtaining pre-clearances for transaction executed on October 06, 2010 and thereby, violated Part A, of clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of PIT Regulations 1992. The violation of the said provisions of PIT Regulations, 1992 by Noticee No. 1, 3 and 4 attracts imposition of monetary penalty under section 15HB of SEBI Act on them.

159. Thus, in view of the findings above, I am of the considered view that, the aforesaid violations by the Noticees No. 1 to 9 make them (except Noticee No. 6) liable for penalty under following Sections of SEBI Act, 1992:

Table No. 19

Sr. No.	Penalty Section under SEBI Act	Violation of SEBI Act/Rules/Regulations	Noticee Name	Noticee No.
1	Section 15HA of SEBI Act, 1992	For violation Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations	Alpana R. Kirloskar	Noticee No. 1
			Arti Atul Kirloskar	Noticee No. 2
			Jyotsna Gautam Kulkarni	Noticee No. 3
			Rahul Chandrakant Kirloskar	Noticee No. 4
			Atul Chandrakant Kirloskar	Noticee No. 5
			Nihal Gautam Kulkarni	Noticee No. 7
			A R Sathe	Noticee No. 8
			A N Alawani	Noticee No. 9
2	Section 15HB of SEBI Act, 1992	For violation of Part A, clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, under Regulation 12(1) of PIT Regulations 1992, r/w Regulation 12(2) of PIT Regulations 2015.	Alpana R. Kirloskar	Noticee No. 1
			Jyotsna Gautam Kulkarni	Noticee No. 3
			Rahul Chandrakant Kirloskar	Noticee No. 4

160. While adjudging the quantum of penalty I may refer to the judgment of the Hon'ble Supreme Court in *Adjudicating officer, SEBI vs. Bhavesh Pabari* decided on February 28, 2019, wherein it is stated that *"...Section 15J of the SEBI Act enumerates by way of illustration(s) the factors which the Adjudicating Officer should take into consideration for*

`

determining the quantum of penalty imposable. The imposition of penalty depends upon satisfaction of the substantive provisions as contained in Sections 15A to Section 15HA of the SEBI Act…"

161. I note that the following illustrative factors are mentioned under Section 15J of SEBI Act, 1992 for adjudging the quantum of the penalty:

"15J - Factors to be taken into account while adjudging quantum of penalty

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."

162. In respect of whether these factors have to be mandatorily considered at the time of adjudging the penalty the Hon'ble Supreme court in the *Adjudicating officer, SEBI vs. Bhavesh Pabari* observed that *"…At this stage, we must also deal with and reject the argument raised by some of the private appellants that the conditions stipulated in clauses (a) to (c) of Section 15J are mandatory conditions which must be read into Sections 15A to 15HA in the sense that unless the conditions specified in clauses (a) to (c) are satisfied, penalty cannot be imposed by the Adjudicating Officer under the substantive provisions of Sections 15A to 15HA of the SEBI Act."* The Hon'ble Supreme court further observed that "*….We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty…"*

163. In view of the above discussion, I have considered the following factors for adjudging the quantum of penalty in the instant matter.

163.1. The amount of disproportionate gain i.e. unlawful / ill-gotten gains / loss avoided by Noticee No. 1 to 6 has been quantified and detailed at paragraph 112 above.

`

163.2. There is nothing on record to show that the default by the Noticee No. 1 to 9 was repetitive in nature.

163.3. However, I also take note of the circumstantial evidence of family arrangement and long passage of time from the date of transaction, as a factor of mitigation for adjudging the quantum of penalty.

163.4. The monetary benefits of fraud was enjoyed by the Noticee 1-6. Noticees 7, 8 and 9 are not recipients of monetary benefits in their capacity as director but failed in discharging their duty to act in good faith and with due diligence in the performance of their duties in the interest of KIL resulting in fraud.

164. In view of the findings above, I am of the considered view that:

164.1. under Sections 11(1), 11 (4) and 11B(1) of the SEBI Act, 1992, for the violation of provisions Section 12A (d) & (e) of SEBI Act, 1992 and Regulations 3(i) and 4 of PIT Regulations, 1992, r/w Regulation 12(2) of PIT Regulations 2015, Noticee No. 1 to 6 are liable for disgorgement of unlawful / ill-gotten gains made by them (as detailed at paragraph 154) and Noticee No. 1 to 5 and Noticee No. 9 should be restrained for a suitable period of time.

164.2. under Sections 11(1), 11 (4) and 11B(1) of the SEBI Act, 1992, for the violation of provisions Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations, Noticee No 1 to 9 (excluding Notice 6) should be restrained for a suitable period of time.

164.3. under Sections 11(1) and 11B(1) of the SEBI Act, 1992, for the violation of provisions Section 12A (d) & (e) of SEBI Act, 1992 and Regulations 3(i) and 4 of PIT Regulations, 1992, r/w Regulation 12(2) of PIT Regulations 2015 by Noticee No. 6, LRs of Noticee No. 6 are liable for disgorgement of unlawful / ill-gotten gains made by Noticee No. 6 to the extent of the assets inherited by the LRs of Noticee No. 6 from Noticee No. 6.

164.4. The details of monetary penalty and disgorgement amount is as under:

`

Table No. 20

Noticee No. (A)	Noticee Name (B)	Penalty section under SEBI Act (C)	Penalty Amount in Rs (D)	Disgorgement amount in Rs. (E)**	Total in Rs. (D +E) = (F)
1	Alpana R. Kirloskar	Section 15HA	**3,00,00,000**	**3,02,23,450**	**6,07,23,450**
		Section 15HB	**5,00,000**		
2	Arti Atul Kirloskar	Section 15HA	**3,00,00,000**	**3,02,23,450**	**6,02,23,450**
3	Jyotsna Gautam Kulkarni	Section 15HA	**3,00,00,000**	**3,02,23,450**	**6,07,23,450**
		Section 15HB	**5,00,000**		
4	Rahul Chandrakant Kirloskar	Section 15HA	**2,50,00,000**	**2,51,54,950**	**5,06,54,950**
		Section 15HB	**5,00,000**		
5	Atul Chandrakant Kirloskar	Section 15HA	**2,50,00,000**	**2,51,54,950**	**5,01,54,950**
6	Gautam Achyut Kulkarni – Since deceased *	Cause of action does not survive	**No Penalty**	**2,51,54,950**	**2,51,54,950**
7	Nihal Gautam Kulkarni	Section 15HA	**15,00,000**	-	**15,00,000**
8	A R Sathe	Section 15HA	**15,00,000**	-	**15,00,000**
9	A N Alawani	Section 15HA	**15,00,000**	-	**15,00,000**
Total					**31,21,35,200**

* The amount mentioned in column "F" of the Table for Noticee No. 6 along with simple interest at 4% p.a. shall be disgorged jointly and severally to the extent of the assets inherited by the LRs.

** Disgorgement amount is the base amount. Simple interest at 4% p.a. is to be paid additionally to be calculated from October 06, 2010 till the date of payment within 45 days from the date of service of this order.

165. With regard to the applicability of interest on unlawful / ill-gotten gains, it is relevant to refer the judgment of Hon'ble Supreme Court in Civil Appeal No. 5677 of 2017 in the matter of Dushyant N. Dalal and Others Vs. SEBI dated October 04, 2017 where it is held that: *".... We are of the view that an examination of the Interest Act, 1978 would clearly establish that interest can be granted in equity for causes of action from the date on which such cause of action arose till the date of institution of proceedings..... It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as the SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity..."*

166. I note that under Section 11(1) of SEBI Act, in the interest of investor and to promote the development of and to regulate the securities market, SEBI is empowered to take such measures as it deems fit to protect the interest of investors. Hence, I am of the view that

`

SEBI is empowered to levy interest. Further, in view of the above judgment of Hon'ble Supreme Court, SEBI has the power to impose interest on unlawful gains from the date of arising of cause of action till the date of payment. In the present case, I note that the date of cause of action i.e. date of transaction was of October 06, 2010. Thus, considering long passage of time since the date of transaction, I am of the view that the quantum of interest imposed on the unlawful gains made by Noticee No. 1 to 6 is reduced from normal rate of interest to 4% p.a simple interest from October 6, 2010 till the date of expiry of period prescribed for disgorgement under this order. In case of failure to pay the disgorgement amount within the said prescribed period, interest at the rate of 12% per annum shall be liable to be paid for the remaining period. The long passage of time is also considered for the purpose of moulding the debarment against the Noticees.

167. I also note that Hon'ble Supreme Court in *N Narayanan vs Adjudicating Officer, Sebi dated April 26, 2013* had made reference to word of caution for the defaulters that *"SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market's integrity".*

`

ORDER

168. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11B(1), 11B(2) and 11(4A) read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby issue following directions and imposed following penalty:

168.1. Noticee No. 1 to 5 and Noticee No. 9 shall not buy, sell or otherwise deal in shares in any manner whatsoever for a period of 6 (six) months from the date of this order.

168.2. Noticee No. 7 and 8 shall not buy, sell or otherwise deal in shares in any manner whatsoever for a period of 3 (three) months from the date of this order.

168.3. Noticee No. 1 to 5 shall individually, and LRs of Noticee No. 6 (on behalf of Noticee No. 6) shall jointly and severally, disgorge an amount as ascertained in column E of Table No. 20 above along with simple interest calculated at the rate of 4% per annum from October 06, 2010 till the date of payment within 45 days from the date of service of this order, subject to paragraph 169 below. In case of failure to pay the disgorgement amount within 45 days from the date of service of this order (subject to paragraph 169 below), interest at the rate of 12% per annum shall be applicable for the period, starting from the end of 45 days from the date of service of this order (subject to paragraph 169 below), till the date of payment.

168.4. Noticee No. 1 to 5, 7, 8 and 9 are directed to pay the monetary penalty as mentioned against their respective names in Column D of the Table No. 20 individually within 45 (forty five) days from the date of service of this order by way of crossed demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai or by e-payment* to SEBI account as detailed below.

Name of the Bank	Branch Name	RTGS Code	Beneficiary Name	Beneficiary Account No.
Bank of India	Bandra Kurla Branch	BKID 0000122	Securities and Exchange Board of India	012210210000008

** Noticees who are making e- payment are advised to forward the details and confirmation of the payments so made to the Enforcement department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 09, 2016 which is reproduced as under:*

`

1. Case Name:	
2. Name of the 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:	

168.5. Subject to para 169, Each of the entities mentioned at Column "A" of the Table 20 shall pay, in the escrow account

168.5.1. A sum equal to amount mentioned in column "F" of Table 20, and

168.5.2. Interest on the amount at column "E" of Table 20 calculated at simple interest at 4% per annum from October 06, 2010 till the date of payment within 45 days from the date of service of this order, and

168.5.3. The entities mentioned at column "A" of the Table 20 pay the said amount from the "escrow account" to SEBI within 45 days from the date of service of this order in the modes mentioned in the order in compliance of directions at paras 168.3 and 168.4.

168.6. Noticees No. 1 to 9 (except Noticee No.6) are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

168.7. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in:

ENFORCEMENT →Orders →Orders of Chairman/Members → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html and selecting Type of Category as 11B orders.

169. As noted earlier in the facts and circumstance of the case, the computational methodology mentioned in the SCN-1, would not be appropriate to reach a reasonable approximation of loss avoided or unlawful/ill-gotten gains made by the Noticee No. 1 to 6. Therefore, the notional unlawful loss avoided has been arrived at using a different computational

`

methodology. Therefore, the directions against Noticee No. 1 to 5 and legal representatives of Noticee No. 6 in respect of their liability to disgorge the amounts as mentioned in Column E of the Table No. 20 of this order, is made contingent on SEBI serving this order to Noticee No. 1 to 5 and legal representatives of Noticee No. 6. Therefore, paragraph 168.3 of this order will take effect as final order against Noticee No. 1 to 5 and legal representatives of Noticee No. 6 only on the expiry of 60 days from the date of service of this order on them unless Noticee No. 1 to 5 and legal representatives of Noticee No. 6 file reply or seek, by a written request, personal hearing only in respect of amount as mentioned in Column E of the Table No. 20 of this order, receivable by SEBI within such period of 60 days from the date of service of this order. If reply / request for personal hearing is filed by Noticee No. 1 to 5 and legal representatives of Noticee No. 6, the directions mentioned in paragraph 168.3 against Noticee No. 1 to 5 and legal representatives of Noticee No. 6 shall be made applicable subject to the determination on the objections/reply.

170. The banks where the aforesaid entities mentioned in Column "A" of the Table 20 are holding bank accounts, jointly or severally, are directed to ensure that, except for compliance of direction at paragraph No 168.5.3, no debits are made in the said bank accounts. The banks are directed to ensure that these directions are strictly enforced.

171. On production of proof of deposit of the entire amount mentioned in 168.5.3 SEBI shall communicate to the banks to defreeze the "debit" in the bank of the respective entities mentioned Table No. 20.

172. If there is a failure to pay the said amount mentioned at column F of Table No. 20, SEBI, within the period mentioned (subject to paragraph 169 above) SEBI may recover such amounts, from Noticees as per applicable law.

173. The order shall come into force with immediate effect subject to para 169.

`

174. A copy of this order shall be served upon all the Noticees, Stock Exchanges, and Registrar to Transfer Agents, Banks and Depositories, for necessary action and compliance with the above directions.

Sd/-

DATE: OCTOBER 20, 2020 **MADHABI PURI BUCH**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA