

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.EAD-5/SVKM/DS/AO/14-18/2016-17]

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

In respect of:

Sr. No.	Name of the Noticee	PAN No.
1.	Shri Manishkumar Kiri	AIGPK7830A
2.	Kiri Industries Ltd.	AAACK9025C
3.	Shri Pravin A Kiri	ABVPK2112M
4.	Shri Suresh Gondalia	AJAPG5795M
5.	Ms. Aruna P Kiri	ACGPK4880V

In the matter of Kiri Industries Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation into the alleged irregularities in the scrip of Kiri Industries Ltd. (hereinafter referred to as 'KIL/ Noticee No. 2') for the possible violation of the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations), against the backdrop of acquisition of Dystar Group of Germany by Noticee No. 2 through its Special Purpose Vehicle (SPV) namely, Kiri Holding Singapore Private Ltd. (KHSPL) in December 2009 and public announcement made thereto. Information relating to the acquisition of the Dystar Group by Noticee No. 2 (KIL) is a 'price sensitive information' in terms of Regulation 2(ha)(i) of the PIT

Regulations, 1992. It came into existence on December 01, 2009 when the final purchase negotiations started between KIL and DyStar Group.

2. The unpublished price sensitive information (UPSI) came into the public domain on December 08, 2009 when KIL informed the Stock Exchanges about the acquisition of DyStar Group. The trading window was closed from December 01, 2009 to December 09, 2009. It is alleged that Shri Manish Kumar Kiri (Noticee No. 1) who was MD of the Company, traded in the scrip of KIL when the trading window was closed during UPSI period and therefore, violated the provisions of Clauses 3.2.2 and 3.2.5 under Part A of Schedule I and Regulation 3(i) of PIT Regulations and Section 12A(e) of SEBI Act, 1992. It is further alleged that Noticee No. 1 entered into opposite transaction within 6 months of prior transaction and therefore violated Clause 4.2 under Part A of Schedule I read with Regulation 12(1) of PIT Regulations. It is also alleged that Kiri Industries Ltd., Ms. Aruna P Kiri, Shri Pravin A Kiri and Shri Suresh Gondalia (Noticee Nos. 2 to 5) failed to implement the model code of conduct by failing to monitor the aforesaid trades of Noticee No. 1 and violated Clauses 1.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I Part A read with Regulation 12(1) of PIT Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudication Officer vide order dated August 04, 2015 to inquire and adjudge under Sections 15G and 15HB of the SEBI Act, 1992, the aforesaid allegations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD5/ADJ/SVKM/DS/34325/2015 dated December 11, 2015 (hereinafter referred to as SCN) was issued to the Noticees under Rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under Sections 15G and 15HB of SEBI Act for the aforesaid allegations as detailed in the said SCN.

5. Vide separate letters but all dated December 28, 2015, Noticees filed their replies to the SCN and made the following submissions:

- i. *With regard to the allegation of taking opposite transactions within 6 months, I would like to state that during the period from January – 2009 to December, 2009 , I had acquired 5,23,791 equity shares of Kiri Industries Limited from open market at an average price of ₹ 153.57 per equity share. Details of said acquisition are given below:*

Date of Acquisition	No. of Shares	Total amount	Amount per share	Date of Intimation to SE & Company by Manish Kiri	Date of Intimation by Company to Stock Exchanges
21.01.09	25000	2958879.11	118.36	23.01.09	23.01.09
02.02.09	17500	1570227.69	89.73	05.02.09	05.02.09
03.02.09	7500	676747.63	90.23	06.02.09	06.02.09
16.02.09	10000	893269.58	89.33	18.02.09	18.02.09
05.03.09	13100	1188222.87	90.70	07.03.09	07.03.09
06.03.09	5000	486305.04	97.26	07.03.09	07.03.09
12.03.09	35000	3883922.36	110.97	14.03.09	14.03.09
25.03.09	56304	6622426.08	117.16	27.03.09	27.03.09
26.03.09	65650	8697599.96	132.48	28.03.09	28.03.09
27.03.09	214814	29454742.99	137.11	30.03.09	30.03.09
08.07.09	44000	10078930.64	229.07	10.07.09	10.07.09
24.11.09	25552	11901564.43	465.78	27.11.09	27.11.09
25.11.09	4000	1854726.09	463.68	27.11.09	27.11.09
26.11.09	371	171407.09	462.01	27.11.09	27.11.09
Total	523791	80438371.56	153.57		

- ii. *Due to urgent requirement of fund I have sold 12,681 equity shares on 13.05.2009 at price of ₹ 151.04 per equity share after taking pre clearance from the Company vide letter dated May 11, 2009 in compliance with insider trading code and model code of conduct.*
- iii. *Further, I have not done the said transaction for speculative purpose, I wanted to consolidate my holding in the Company in Compliance with SEBI regulations. Due to reverse transaction I incurred a loss of ₹ 32083/- because my average cost of acquisition of 5,23,791 equity shares is ₹ 153.57 per share and I have sold 12,681 shares at price of ₹ 151.04 per share.*
- iv. *With regard to allegation of trades during trading window closure, it was submitted that Noticee No. 1 is not aware of any such transaction.*
- v. *Noticee Nos. 2 to 5 adopted the reply of Noticee No. 1.*

6. On January 29, 2016 Noticee No. 4 and Shri Keyoor Bakshi appeared for all the Noticees and submitted the following:
- i. *Clause 4.3 gives discretion to the Compliance Officer to permit the contra transaction in certain circumstances. In the instant case, the Compliance Officer permitted the transaction of sale of 12,681 shares by Noticee No. 1 in May 2009. Minutes of the decision are filed.*
 - ii. *Further with respect to the purchase of 42 shares during the trading window closure period on 03.12.2009, it was explained that there was a buy transaction on 01.12.2009 by Noticee No. 1 which was forced due to auction by the exchange. The subsequent buy was to neutralize earlier sale transaction.*
 - iii. *As regards the allegation with respect to Noticee Nos. 2 to 5, it was submitted that they were not aware of the transactions of Noticee No. 1 during trading window closure period. As Noticee No. 5 states that this was explained by Noticee No. 1 to him as the neutralization of transaction dated 01.12.2009. Further Noticee Nos. 2 to 5 adopted the reply of Noticee No. 1.*
7. Subsequently vide letters dated February 08, 2016 and March 01, 2016, Noticees forwarded letters from their Stock Broker i.e. Edelweiss Broking Ltd. giving details of auction transaction of 42 equity shares of KIL.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the replies to the SCN, submissions of Noticee and the documents available on record. The issues that arise for consideration in the present case are :
- a) Whether Noticee 1 has violated provisions of Clauses 1.2, 3.2.2, 3.2.5 and 4.2 of Model Code of Conduct specified in Part A of Schedule I read with Regulation 12(1) of PIT Regulations and Regulation 3(i) of PIT Regulations and Section 12A(e) of SEBI Act, 1992?

- b) Whether Noticee Nos. 2 to 5 have violated provisions of Clause 1.2 of Model Code of Conduct specified in Part A of Schedule I read with Regulation 12(1) of PIT Regulations?
- c) Do the violations, if any, on the part of Noticees attract any penalty under Sections 15G and 15HB of the SEBI Act, 1992?
- d) If yes, then what should be the quantum of penalty?

FINDINGS:

Allegation 1:

9. It is noted from the shareholding pattern disclosed to the exchange, the shareholding of Noticee No. 1 who is the promoter & M.D. of the company underwent following changes between December 2008 and December 2009:

Name of the Promoters	(No. of Shares) Post-issue (April 2008)	(No. of Shares) Jun-08	(No. of Shares) Sep -08	(No. of Shares) Dec -08	(No. of Shares) Mar-09	(No. of Shares) Jun-09	(No. of Shares) Sep-09	(No. of Shares) Dec-09	(No. of Shares) Mar-10
Manish P. Kiri	1120700	1120700	1120700	1120700	1570568 (1120700 + 449868)	1557887 (1570568 - 12681)	1601887 (1557887 + 44000)	1631810 (1601887 + 29923)	1631810

10. Transactions of the Noticee No. 1 in the scrip of Kiri between March, 2009 and December, 2009 are as follows:

S. No.	Quarter Ending	Buy	Sell
1	March, 2009	4,49,868	-
2	June, 2009	-	12,681

3	September, 2009	44,000	-
4	December, 2009	29,923	-

11. As per the requirement of Regulation 12 (1) of PIT Regulations, all listed companies and organisations associated with securities markets shall have a code of internal procedures and conduct.
12. As per Clause 4.2 under Part A, Schedule I of Code of Conduct under PIT Regulations, all directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction.
13. It is alleged that Noticee No. 1 has violated the above provisions of PIT Regulations, 1992 while executing transactions at Sr. No. 2-4 in the table above.
14. Noticee No. 1 submitted that due to urgent requirement of fund, he had sold 12,681 equity shares on 13.05.2009 at price of ₹ 151.04 per equity share after taking pre clearance from the Company vide letter dated May 11, 2009. A copy of the said letter was also filed.
15. Copy of the said letter has been perused and it is noted that vide letter dated May 11, 2009, pre-clearance was indeed sought by Noticee No. 1 to sell upto 15,000 shares at the prevailing market prices. Subsequently, vide letter dated May 12, 2009 Pre-Clearance was granted to Noticee No. 1 to sell not more than 15000 shares within 7 working days from the pre-clearance. Accordingly, sale of 12,681 shares was executed on May 13, 2009.
16. It is further noted from the documents available on record that Noticee No. 1 also took pre-clearance from the Compliance Officer to buy 45000 equity shares and 30000 equity shares on July 06, 2009 and November 21, 2009 respectively. The pre-clearance for the same was granted by the Compliance Officer i.e. Noticee No. 5 vide letters dated July 06, 2009 and November 21, 2009 respectively. Accordingly, these purchase transactions were executed on July 08, 2009 and November 24, 2009 respectively.

17. As per the Guidance Note of SEBI dated July 24, 2009 on PIT Regulations, 1992, the opposite transactions are allowed subject to the clearance of the Compliance Officer. The same is reproduced hereunder:

Can the Compliance Officer extend the waiver clause to the amended Clause 4.2 i.e. restrictions on opposite transactions?

Clarification: Yes. The waiver clause in Clause 4.3 is applicable for the entire Clause 4.2 and hence it may be applied for sale of shares by personal emergencies after recording the reasons in writing and ensuring that there is no element of insider trading.

18. In the instant case, it is noted that Noticee No. 1 obtained pre clearance for the opposite sell transaction of 12681 shares on May 11, 2009 and subsequent buy transactions of 44000 and 29923 shares on July 06, 2009 and November 21, 2009 and the same is permissible under the Guidance Note of SEBI dated July 24, 2009 as aforesaid. Therefore, these trades cannot be faulted on the ground of undertaking opposite transactions within 6 months of prior transactions in violation of Clause 4.2 under Part A, Schedule I of Code of Conduct under PIT Regulations.

Allegation 2:

19. In the year 1998, Kiri Industries Ltd. (Noticee No. 1) had set up Dyes manufacturing unit at Vatva, Ahmedabad. Noticee No. 1 formed Joint Venture with Long Sheng (China) and set up manufacturing facility for Dyes at Padra (Baroda, Gujarat). On 4th February, 2010, KIL acquired DyStar Group of Germany, through SPV Kiri Holding Singapore Pvt. Ltd.

20. On February 04, 2010, Noticee No. 1 acquired Dystar Group of Germany, through SPV Kiri Holding Singapore Pvt. Ltd. The chronology of events relating to the acquisition of Dystar Group is as follows:

Date	Event in relation to acquisition of Dystar Group
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05-10-2009	A meeting was held of representatives of KIL, MD of Dystar Group with Investment Advisor (IA) wherein KIL showed as interest in acquiring DyStar however without submitting a specific offer. IA informed representatives of KIL that a proper bidding process would be organised for the same.
October- November 2009 (Dates not specified by IA)	Investor process was organised by KPMG corporate finance (appointed as transaction consultant by DyStar Management). In this process, 151 investors were contacted and 27 indicative bids were submitted. Bidders were allowed to undertake due diligence, Simultaneous negotiations with multiple potential investors were undertaken.
13-11-2009	KIL engaged PWC for providing value analysis of DyStar Group on a going concern basis for the purpose of internal strategic decision making by KIL.
27-11-2009 to 30-11-2009	Final purchase agreement negotiations were held by IA with Atul Ltd. Which had placed most interesting bid as per IA.
30-11-2009	Atul Ltd. cancelled and withdrew from the purchase agreement negotiations.
01-12-2009	KIL incorporated special purchase vehicle (SPV) in Singapore – Kiri Holding Singapore Private Ltd. (KHSPL) for the purpose of acquisition.
01-12-2009 to 04-12-2009	The purchase agreement negotiations were held with KIL after failure of negotiations with highest bidding potential investor i.e. Atul Ltd.
04-12-2009	Asset Purchase Agreement between IA and KIL for the acquisition of assets of DyStar was executed and certified by the notary.
08-12-2009	Corporate Announcement was made by KIL to exchanges that the company through its SPV KHSPL has executed purchase agreement for acquisition of DyStar and its selective assets.

21. The information relating to the acquisition of DyStar Group by Kiri was a price sensitive information in terms of Regulation 2(ha)(i) of the PIT Regulations, till it became public. According to SEBI, the price sensitive information had come into existence on December 01, 2009 when final purchase negotiations started between Kiri and DyStar Group. The said information became public on December 08, 2009 when Kiri informed stock exchanges about the acquisition. Admittedly, the Unpublished Price Sensitive Information (UPSI) period is from 01.12.2009 to 08.12.2009. Noticee No. 1, being MD of the company was involved in the process of acquisition during the UPSI period. Further, the trading window was closed from December 01, 2009 to December 09, 2009.

22. Noticee No. 1 traded in the scrip of the company as under:

Name of the entity	Pre-UPSI Period (01.11.2009 - 30.11.2009)		UPSI Period (01.12.2009 - 08.12.2009)	
	Buy	Sell	Buy	Sell
Manishkumar P Kiri	30000	0	<u>42</u>	0

23. On the basis of above, it was alleged that Noticee No. 1 bought 42 shares during trading window closure period and violated the provision of Clauses 3.2.2 and 3.2.5 under Part A of Schedule I and Regulation 3(i) of PIT Regulations and Section 12A(e) of SEBI Act, 1992. It was further alleged that Noticee Nos. 2-5 failed to monitor the aforesaid trade of Noticee No. 1 and implement code of conduct which is in violation of Clause 1.2 of under Part A of Schedule I read with Regulation 12(1) of PIT Regulations.
24. It is noted from the reply of Noticee No. 1 that on November 24, 2009 he had bought 12050 shares of the company in settlement no. 2009161. This transaction was before the UPSI period when the trading window closure does not apply. However, 2000 shares were short and were to be received in Auction Settlement on November 27, 2009. But, in the Auction Settlement, 1958 shares only were delivered on December 01, 2009 (the day when the UPSI came into existence) and 42 shares were short and delivered by the broker on December 03, 2009. Noticee No. 1 has filed a letter dated February 12, 2016 from Edelweiss Stock Broking Ltd. (broker to the transaction), containing the transaction and settlement detail sheet in support of the transaction.
25. I have perused the reply of Noticee No. 1 and the transaction and settlement detail sheet of the Broker. It is important to look into the circumstances which led Noticee No. 1 to buy such miniscule quantity of 42 shares. The said order was executed on November 24, 2009 for 12050 shares. However, on the day of the settlement which takes place on T+2 i.e. 2nd working day after the trade i.e. November 26, 2009, 2000 shares were short for delivery to Noticee No. 1. Hence, the exchange conducted the auction settlement on T+3 i.e. on November 27, 2009 and because of non-availability of shares in the market, Noticee No. 1 was delivered 1958 shares on December 01, 2009 as against 2000 shares receivable by him. Thus, the said delivery was again 42 shares short. Hence, the impugned transaction of a meagre 42 shares on December

03, 2009 cannot be seen in isolation as it relates back to an earlier partly-performed transaction dated November 24, 2009 for 12050 shares which is not covered under UPSI period. This is clear from the evidence in the form of transaction details of the broker, Edelweiss Stock Broking Ltd., filed by Noticee No. 1.

26. In view of the above, violation of the provision of Clauses 3.2.2 and 3.2.5 under Part A of Schedule I and Regulation 3(i) of PIT Regulations and Section 12A(e) of SEBI Act, 1992 by Noticee No. 1 and consequential violation of Clause 1.2 of under Part A of Schedule I read with Regulation 12(1) of PIT Regulations by Noticee No. 2-5 is not established.

ORDER

27. In view of the above, after considering all the facts and circumstances of the case and evidence on record, it is concluded that the allegations levelled against Manish Kumar Kiri , Kiri Industries Ltd., Ms. Aruna P Kiri, Shri Pravin A Kiri and Shri Suresh Gondalia are not established.

28. Accordingly, the adjudication proceedings initiated against the Noticees vide the SCN dated December 11, 2015 stand disposed of without penalty.

29. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to Noticees and also to Securities and Exchange Board of India.

Place: Mumbai
DATE: February 23, 2017

S V KRISHNAMOHAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER