

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER/SS/VS/2018-19/773]**

**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:

**Shree KGFM Pvt. Ltd.**

In the matter of

**Rei Six Ten Retail Limited**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination in the scrip of Rei Six Ten Retail Ltd. (hereinafter referred to as the Company), a company listed on the Bombay Stock Exchange (hereinafter referred to as 'BSE') and the National Stock Exchange (hereinafter referred to as 'NSE'), during the period May 2014 to December 2014. During the examination, it was observed that, shareholding of Shree KGFM Pvt. Ltd. (hereinafter referred to as 'the Noticee'), the promoter of the Company, had decreased from 18.01% to 9.47% for the quarter ending report of June, 2014 to September 2014. Examination, *inter alia* revealed that, the Noticee had not made the disclosures or made delayed disclosures as required under regulation 13(4A) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations") to the BSE and NSE for its following transactions in the shares of the Company:-

Date of transaction	Gr Sell Vol	Gr Sell Value	Shareholding after transaction	Holding as % of paid up capital of company	Change in Holding (Shares)	Disclosure under PIT Regulations	
						BSE	NSE
28/07/2014	692000	279249	21351775	14.52%	-0.47%	Yes	No
30/07/2014	800000	317015	20551775	13.97%	-0.54%	Yes	No
04/09/2014	100000	37000	14731789	10.01%	-0.07%	Delayed disclosure on 17/09/2014)	Delayed disclosure on 17/09/2014)
22/09/2014	50000	25250	14021785	9.53%	-0.03%	Yes	No
25/09/2014	100000	40000	13921785	9.46%	-0.07%	Yes	No

2. The above observation was based upon the information regarding the disclosures made by the Noticee, as provided by BSE, vide email dated April 04, 2015 and NSE, vide email dated April 15, 2015.
3. In view of the above, the Whole Time Member, SEBI felt satisfied that there are sufficient grounds to adjudicate upon the alleged violations by the Noticee and appointed Shri Suresh Gupta, Chief General Manager, as Adjudicating Officer (AO) vide order dated August 12, 2016 to adjudge under section 15A(b) of the SEBI Act for the alleged violations by the Noticee. The AO sought clarification and evidence and thereafter the concerned department in SEBI provided to the AO the transaction statement of the Noticee for the relevant period as provided by CDSL.
4. Thereafter, vide communication -order dated April 02, 2018, this case has been transferred to me. It has been informed, vide the said communication, that except for the change of the Adjudicating Officer the other terms and condition of the original orders (whereby the aforesaid Adjudicating Officers were appointed) '*shall remain unchanged and shall be in full force and effect*'. It has been advised that I should proceed in accordance with the terms of reference made in the original orders. The terms of reference in this case as noted from records is alleged violation of the provisions of regulation 13(4A) read with regulation 13(5) of PIT Regulations with respect to aforesaid change in shareholding of the Noticee in the company. The relevant provisions of PIT Regulations charged in this case and possible consequence therefor provided in SEBI Act are reproduced hereinafter:

***Continual disclosure.***

**13(4A)** Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

**(5)** The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

**Penalties and Adjudication**

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

**15A.** If any person, who is required under this Act or any rules or regulations made thereunder,—

(a) .....

*(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees*

5. Accordingly, in terms of rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudication Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') read with section 15I of the SEBI Act and terms of reference as advised in above communication dated April 02, 2018 the notice to show cause no. EAD/SS/VS/12280/2018 dated April 23, 2018 (hereinafter referred to as 'the SCN') was issued to the Noticee, calling upon it to show cause as to why an inquiry should not be held against it in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act for the aforesaid alleged violations.
6. The SCN was sent at the last known three different addresses of the Noticee as available on record through Speed Post Acknowledgment Due, which was, duly served upon the Noticee at two of its addresses and was returned undelivered from the remaining one. The Noticee, vide letter dated May 04, 2018 received by SEBI on May 15, 2018, from a different sender's address, *inter alia*, submitted that: "...we kindly request your good office, to provide us more time for submission of the reply alongwith all the relate documents for the same".
7. Vide letter dated May 16, 2018, the Noticee was advised to submit its reply by May 24, 2018 and to avail the opportunity of personal hearing, in terms of rule 4 (3) of the Adjudication Rules, on May 29, 2018. The aforesaid notice of hearing was sent at the new address, which returned undelivered. Accordingly, another opportunity of personal hearing was granted to the Noticee on June 14, 2018. The notice of hearing was duly served upon it. During the hearing, Noticee's Authorised Representative (AR) Mr. Sharath Pai appeared and made submissions. When the charges / allegation were explained to him, on the basis of terms of references and documents relied upon, the learned AR requested for time to file written reply with supporting evidence and requested to drop the charges on the basis of reply/submissions. The Noticee, vide its email dated June 21, 2018 *inter alia*, submitted that:
  - a. *That the Show Cause notice dated 23rd April, 2018 itself mentioned that NSE had received intimation of delayed filing with respect to the transaction that took place on the 4th of September, 2014 and hence it was not possible to believe that NSE had not received the earlier communications from the Company with respect to all the transactions that had taken place.*

- b. *That the BSE had admitted/acknowledged to receiving all communications from the Company and as to why NSE had not received the communications were not known to the Company as the Company had regularly informed of all transactions that had taken place vide its letters marked to both the BSE and the NSE. As proof following Letters, dated 30.07.2014, 17.09.2014, 24.09.2014 and 29.09.2014, are annexed for your perusal and record).*
  - c. *That if the Company had promptly addressed all communications to BSE then it could not be inferred that the Company had any ulterior motives in not informing the NSE as no benefit of any nature whatsoever would accrue to the Company by not informing NSE. On the contrary the Company had been very prompt in informing both the BSE and the NSE of all the transactions that had taken place vide its letters annexed with these written submissions.*
  - d. *That there was admittedly a delay in reporting of the transaction dated 04-09-2014. The reporting was to be done by the 08th of September, 2014. On account of an intervening Saturday and Sunday the delay occurred which delay ought to be condoned.*
  - e. *That In view of above written submissions, it is prayed, that this Hon'ble Board be pleased to condone the delay and direct the concerned department to re check and maintain the record with respect to alleged transactions.*
8. I have considered the allegations levelled in the terms of reference, the aforesaid submissions of the Noticee and the relevant material available on record. It is noted that, under the provision of regulation 13 (4A) read with regulation 13 (5) of the PIT Regulations, any person who is a promoter or part of promoter group of a listed company, shall disclose the change in shareholding (the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower) to the company and to the stock exchange where the securities are listed in Form D, within 2 working days of sell transactions of shares.
  9. In this case, it is undisputed fact that the Noticee, the promoter of the Company had made sell transactions in the shares of the Company on five dates as described hereinabove. It is admitted fact that, with regard to its sell transaction dated September 04, 2014 the Noticee had made delayed disclosures in requisite format to both the exchanges such as BSE and NSE, with a delay of 9 days.
  10. It is also matter of record that with regards to its four sell transactions dated July 28, 2014, July 30, 2014, September 22, 2014 and September 25, 2014, the Noticee had made disclosures to BSE in requisite format. The dispute is only with regard to alleged non-disclosure of these four sell transactions to NSE. The Noticee has contended that it had made disclosures to both the exchanges with regards to all its five sell transaction simultaneously by way of common disclosures. If BSE

received the same for all it cannot be said that NSE could receive only for the sell transaction dated September 04, 2014 which was admittedly received by it. While the Noticee could demonstrate that it had sent letters to BSE/NSE both simultaneously alongwith relevant disclosures, it could not produce any evidence that the disclosures about these four sell transactions were received by NSE also. In this regard, it is pertinent to mention that Hon'ble SAT, in the matter of **Mega Resources Ltd. v. SEBI (Appeal No. 49/2001)** has observed that, *"...regulation is not simply on sending the information, it requires disclosure. Mere dispatch of the information is short of the said requirement. If the requirement was only "to send", on sufficient proof of posting the letter would have in the normal course to some extent met with such a requirement. But Regulation 7(1) requires the acquirer to disclose the aggregate of his holding in the Target Company to the company. Sub regulation (2) prescribes the time limit within which the disclosure is required to be made.....According to Black's Law Dictionary "Disclosure" means –act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox."* Thus, mere dispatch of the disclosures is not sufficient to show compliance of the disclosure obligation. What is important is that the disclosures should actually reach the exchange. In the present case NSE have submitted that they did not receive any disclosures from Noticee and the Noticee is unable to establish that its disclosures with regard to these four sell transactions actually reached NSE and were received by it.

11. I, therefore, find that the Noticee had failed to disclose his shareholding as per regulation 13(4A) read with regulation 13(5) of the PIT Regulations in Form D to NSE with regard to its sell transactions dated July 28, 2014, July 30, 2014, September 22, 2014 and September 25, 2014 and made delayed disclosure with regards to sell transaction dated September 04, 2014 to BSE and NSE as alleged in this case.
12. In the matter of **Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. vs. SEBI**—the Hon'ble SAT, vide its order dated April 15, 2005 held that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."* In view of the above, I hold that the breach by the Noticee as found hereinabove attracts penalty as prescribed under Section 15A(b) of the SEBI Act.
13. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the Act, 1992 which reads as follows:-

**15J - Factors to be taken into account by the adjudicating officer**

*While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.”*

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

14. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. However, it is noteworthy that the Noticee had disclosed its sell transaction to atleast one of the exchange where it is listed. The delay with regard to its sell transaction dated September 04, 2014 was only for 9 days.
15. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of Rs. 1,00,000/- (Rupees One Lac only) on the Noticee viz. Shree KGFM Pvt. Ltd. under section 15HB of SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.
16. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

17. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange

Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E),  
Mumbai - 400 052” and also to e-mail id:- [tad@sebi.gov.in](mailto:tad@sebi.gov.in)

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)	

18. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

**Date: June 25, 2018**

**Place: Mumbai**

**Santosh Shukla**

**Chief General Manager &  
Adjudicating Officer**