

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/SM/ 20 /2019-20]**

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 and UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956, READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

**M/s Kelvin Fincap Limited
(formerly known as Dahyabhai Sons Limited)
(PAN No. AAACD1881H)**

In the matter of M/s. Kelvin Fincap Ltd (formerly known as Dahyabhai Sons Limited)

Facts of the Case:

1. Securities and Exchange Board of India ("SEBI") had conducted an investigation into the dealings in the scrip of Kelvin Finacp Ltd (formerly known as Dahyabhai Sons Limited) (hereinafter referred to as "KFL/Company/Noticee") for the period from November 30, 2011 to May 29, 2014 (hereinafter referred to as "Investigation period/IP"). Pursuant to the investigation, it was observed that during April 07, 2012 to January 15, 2013, erstwhile promoters of KFL, Mr. Keyur M Shah, M/s. Keyur M Shah (HUF) and Ms. Kavita K Shah had transferred their shares through off-market to certain entities which led to change in promoter shareholding of KFL. KFL had received the disclosures from the erstwhile promoters but failed to disclose the change in promoter shareholding to Bombay Stock Exchange (hereinafter referred to as "BSE/stock exchange") and thus violated Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter Referred to as "PIT, 1992"). It was also observed that KFL had failed to make disclosure under quarterly shareholding pattern of promoter group entities for the quarter ended June 2012 pursuant to the above transfer of shares violated Clause 35 of Listing Agreement read with Section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "SCRA").
2. In this order wherever PIT 1992 is mentioned it should be referred to as PIT 1992 read with Regulation 12 of PIT 2015.
3. The following promoters of KFL had transferred their shares to the following entities.

| S. No. | Date Of Transaction | Transferor Name | Transferee Name | Quantity Transferred |
|--------|---------------------|------------------|---------------------|----------------------|
| 1 | 07/04/2012 | Keyur M Shah HUF | Narendra R Shah HUF | 50000 |

| | | | | |
|----|------------|---------------|---------------------|--------|
| 2 | 07/04/2012 | Kavita K Shah | Narendra R Shah | 50000 |
| 3 | 07/04/2012 | Kavita K Shah | Geeta Narendra Shah | 50000 |
| 4 | 07/04/2012 | Kavita K Shah | Abhishek N Shah | 30000 |
| 5 | 15/01/2013 | Kavita K Shah | Abhishek N Shah | 6000 |
| 6 | 07/04/2012 | Keyur M Shah | Narendra R Shah | 200000 |
| 7 | 07/04/2012 | Keyur M Shah | Geeta Narendra Shah | 50000 |
| 8 | 07/04/2012 | Keyur M Shah | Mahesh R Shah | 70000 |
| 9 | 07/04/2012 | Keyur M Shah | Abhishek N Shah | 40000 |
| 10 | 14/04/2012 | Keyur M Shah | Abhishek N Shah | 41050 |
| 11 | 14/04/2012 | Keyur M Shah | Geeta Narendra Shah | 50000 |
| 12 | 14/04/2012 | Keyur M Shah | Narendra R Shah | 80000 |
| 13 | 15/01/2013 | Keyur M Shah | Abhishek N Shah | 25750 |

4. KFL vide letter dated June 19, 2017, submitted that it had received disclosures from then promoters viz. Keyur M Shah, Kavita K Shah and Keyur M Shah (HUF) and also provided certified copies thereof.
5. BSE informed via e-mail dated June 05, 2017 that it has not received any disclosure from the KFL for the aforesaid transfer of shares
6. It was alleged that consequent to the transfer of shares as aforesaid, KFL had received the disclosure from the respective promoter, however it failed to disclose the same within two working days to the Stock Exchange and thus violated Regulation 13 (6) of PIT Regulation.
7. Further, it was also observed that the off-market transfers executed by Keyur M Shah, Kavita K Shah and Keyur M Shah (HUF) during April – June 2012 were not accounted by KFL while disclosing shareholding pattern of the promoter group entities for the quarter ended June 30, 2012. Hence, it was alleged that KFL made wrong disclosure of promoter shareholding to BSE for the quarter ended June 30, 2012 in violation of Clause 35 of Listing Agreement read with Section 21 of SCRA.

Appointment of Adjudicating Officer

8. The undersigned has been appointed as Adjudicating Officer vide order dated September 26, 2017 under Section 19 of the SEBI Act read Section 15-I of SEBI Act” read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “AO Rules”) to inquire and adjudge under Section 15A(b) of SEBI Act on Noticee for the alleged violation of Regulation 13(6) of PIT Regulation and under

Section 23-I of SCRA read with Rule 3 of Securities Contracts (Regulation) (Procedure For Holding Inquiry And Imposing Penalties By Adjudicating Officer) Rules, 2005 (hereinafter referred to as SCRA Rules) to inquire and adjudge under Section 23E of SCRA for the alleged violation of Clause 35 of Listing Agreement read with Section 21 of SCRA.

Show Cause Notice:

9. Based on the findings by SEBI, Show Cause Notice dated February 21, 2018 (hereinafter referred to as 'SCN') was served on Noticee at the address "*2, Kuber Bhavan Society, Ground Floor, Nr Bhagwati Hospital Road, Behind Kavita Dairy, Borivali (West), Mumbai – 400091*". in terms of Rule 4 of AO Rules read with Section 15 (I) of SEBI Act, calling upon the Noticee to show cause as to why an inquiry should not be held against it and penalty should be not imposed under Section 15A(b) of SEBI Act, 1992 and under Section 23E of SCRA on Noticee for the alleged provisions of law. The SCN issued was also sent through digital e-mail at investors@kelvinfincap.com and through registered speed post. The SCN sent by post returned undelivered and thereafter affixture of the SCN was done as per Rule 7(c) of the Adjudicating Rules. The copy of the SCN was also uploaded on the website of SEBI under Unserved Summons/Notices (www.sebi.gov.in). A Public Notice was published on October 18, 2018 of the undelivered SCN and opportunity of personal hearing was granted on October 29, 2018. Since there was no reply of the SCN and KFL did not appear on the said date, Alternate Address and contact details were sought from M/s Purva Sharegistry (I) Pvt Ltd (Registrar and Share Transfer Agent (RTA) of KFL). Contact details and address was provided by RTA and the SCN was sent to the address provided which was duly delivered.

Personal Hearing:

10. No reply filed by the Noticee, however, in the interest of natural justice and in terms of Rule 4 (3) of Rules, the Noticee was given an opportunity of personal hearing on April 22, 2019. However, I note that the Noticee failed to avail the opportunity of hearing on the scheduled date of hearing i.e April 22, 2019, however telephonically requested for an adjournment of the personal hearing on April 26, 2019 for which e-mail was sent on April 22, 2019 to the e-mail address nrshah50@yahoo.com and investors@kelvinfincap.com. Further again on the request of noticee, the personal hearing was adjourned to May 02, 2019 and the same was communicated by e-mail. The Noticee did not appeared on the said date. Further, from the record, I also note that no submissions or communication have been made by the Noticee with respect to the SCN or the hearing Notices till date. In this connection, it is pertinent to note that the Noticee was informed if no appearance is made for personal hearing, the matter shall be decided on the basis of the facts / material available on record in terms of sub-rule (7) of Rule (4) of the AO Rules. In this connection, I am of the view that sufficient time has been provided to the Noticee to submit its reply to the charges alleged in the SCN, besides being provided with opportunities of personal hearing. However, I note that the Noticee failed to submit its reply and also failed to appear for the personal hearing.
11. In this regard, I would like to refer to the observations of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Dave Harihar Kirtibhai Vs SEBI (Appeal No. 181 of 214 dated

December 19, 2014), wherein the Hon'ble SAT observed as under: "...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."

12. In view of the observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly I deem it appropriate to proceed against the Noticee ex-parte, based on the material available on record

ISSUES FOR CONSIDERATION and FINDINGS:

I have carefully perused the documents available on record. The issues that arise for consideration in the present case are:

Issue I: Whether the Regulation 13 (6) of the PIT Regulations and violation of Clause 35 of Listing Agreement read with Section 21 of SCRA was violated by Noticee;

Issue II Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act and under Section 23E of SCRA on Noticee;

Issue III If so, what should be the quantum of monetary penalty?

Before proceeding further, I would like to refer to the relevant provisions of PIT Regulations, Listing agreement and SCRA,

Relevant provisions of PIT Regulations, 1992:

Disclosure by company to stock exchanges

13. (6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.

Relevant provision of PIT Regulations, 2015

Repeal and Savings:

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any

penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

Relevant provisions of SCRA:

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

Clause 35 of Listing Agreement

"The company agrees to file with the exchange the following details, separately for each class of equity shares/security in the formats specified in this clause, in compliance with the following timelines, namely :-

a. One day prior to listing of its securities on the stock exchanges.

b. On a quarterly basis, within 21 days from the end of each quarter.

c. Within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital".

Findings:

13. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

14. I find from the record that the promoters of KFL had transferred their shares to certain entities and reportedly they had made required disclosure about their changed shareholding to KFL within the stipulated time period, however KFL has failed to disclose the same to the Stock Exchange within the time prescribed under Regulation 13(6) of PIT Regulation and hence violated Regulation 13(6) of PIT Regulation and liable for penalty.

15. Further, I also observe from the quarterly shareholding pattern filed by KFL for the quarter ended June 2012 that Noticee failed to disclose about the change in the shareholding due to transfer of shares by the promoters for the quarter ended June 2012 and thereby violated Clause 35 of Listing Agreement read with Section 21 of SCRA and liable for penalty.

16. It is critical to note here that shareholders who had transferred their shares as mentioned above also had not made disclosure to the Stock Exchange, resultantly other shareholders of the company and public at large was not aware of major change in the shareholding of the company.

17. The company has not filed any reply to contradict the allegation made in the show cause notice. Here I would like to refer Hon'ble Securities Appellate Tribunal, in Appeal no. 68 of 2013 in *Sanjay Kumar Tayal and others v SEBI*, vide its order dated February 11, 2014 have stated that

“appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and therefore appellants are presumed to have admitted charges levelled against them in the show cause notices.”

18. In view of the above, I note that the Noticee have violated Regulation 13(6) of PIT Regulation and liable for penalty under Section 15A(b) of SEBI Act and Clause 35 of the Listing Agreement read with Section 21 of SCRA and liable for penalty under Section 23E of SCRA.

Issue II Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act and Section 23E of SCRA on Noticee;

15A. *If any person, who is required under this Act or any rules or regulations made there under,—*
(a).....

(b) *to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

23E. *Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.*

“If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees”.

19. The Noticee by failing to disclose to change in the shareholding of the promoters is liable to penalty under Section 15A(b) of SEBI Act and also failure to disclosure in the quarterly shareholding pattern filed with the stock exchange for the quarter ended June 2012 is liable for penalty under Section 23E of SCRA.

20. The judgement of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has also held that *“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...”*.

Issue III: If so, what should be the quantum of monetary penalty?

21. While determining the quantum of penalty under Section 15A(b) of SEBI Act and under Section 23E of SCRA, it is important to consider the factors stipulated in Section 15J of SEBI Act and Section 23J of SCRA which read as under:-

15J - Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

(b) *the amount of loss caused to an investor or group of investors as a result of the default;*

(c) the repetitive nature of the default.

23J - Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 23-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.

22. With regard to the above factors, it may be noted that the examination report has not quantified the profit/loss for the violations committed by the Noticee. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticee or the amount of loss caused to an investor or group of investors as a result of the default. The Noticee by its failure to make disclosures, have severely impaired the integrity of the disclosure system put in place by the regulator and has deprived the investors of the significant information at the relevant time. Hence its actions warrant the imposition of penalty.
23. I note that SEBI while investigating the price manipulation in the scrip of Kelvin Fincap Ltd had observed that there were extensive off-market transfer of the shares all of a sudden wherein shares were sold to several random people located at different parts of the country and then excessive trading has taken place in the scrip unlike its regular pattern which had led to huge spurt in the price of this stock. I also note that SEBI vide order dated August 14,2014 confirming it vide order dated March 31,2015 and Final order dated October 03,2017 has debarred Kelvin,its erstwhile promoters and several other entities for the fraudulent activities in the scrip Kelvin under Section the 12A (a) (b) and (c) of the SEBI Act, 1992 and regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a), (b), (e) and (g) of the PFUTP Regulations
24. I am also appointed to adjudicate the price manipulation in the scrip of Kelvin Fincap Ltd, wherein adjudication proceedings have been initiated against over hundred entities wherein the matter is being dealt separately, The non-disclosure by KFL about its new shareholders and not disclosing the same to the stock exchange in the quarter shareholding pattern for the quarter June 2012 cannot be taken lightly and hence the penalty is levied accordingly

ORDER

25. In view of the above, after considering all the facts and circumstances of the case, the material available on record, the submission made by the Noticee, in exercise of the powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the AO Rules, hereby impose a penalty of **Rs. 10,00,000 /- (Rupees Ten Lakh only)** under Section 15 A (b) of SEBI Act for violation of the provisions of Regulation 13 (6) PIT Regulations and under Section 23-I of SCRA read with Rule 5 of the SCRA Rules, hereby impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh only)** under Section 23E of SCRA for violation of the provision of Clause 35 of the Listing Agreement read with Section 21 of SCRA on the Noticee i.e.,Kelvin Fincap Ltd.,

26. The said penalty imposed on the Noticee, as mentioned above, shall commensurate with the violation committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.
27. 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 favor 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:

Account No. for remittance of penalties levied by Adjudication Officer

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

28. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manager (Enforcement Department - DRA- IV) of SEBI. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

| | |
|---|---------|
| Date | |
| Department of SEBI | |
| Name of Intermediary/other Entity | |
| Type of Intermediary | |
| SEBI Registration Number (if any) | |
| PAN | |
| Amount (in Rs.) | |
| Purpose of payment | Penalty |
| Bank Name and Account Number from which payment is remitted | |
| UTR No | |

29. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.
30. In terms of Rule 6 of the Rules, copy of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: May 30, 2019
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER