

## ADJUDICATION ORDER NO. EAD-8/JS/SP/70/2018

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**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 Shri Dinesh Agrawal -PAN AEDPA4294D in the matter of KDDL Ltd.**

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### **BACKGROUND**

1. Securities and Exchange Board of India (**'SEBI'**) during the examination in the scrip of KDDL (**'KDDL/Company'**), a company listed at The Bombay Stock (**'BSE'**) and National Stock Exchange (**'NSE'**) for the period October 01, 2014 to December 31, 2014 (**'relevant period/RP'**) observed that Shri Dinesh Agrawal (**'Dinesh/Noticee'**), Whole Time Director of KDDL Ltd., has sold 2,000 shares on November 21, 2014 for a value of Rs.5,19,800, which allegedly failed to disclose in terms of Regulations 13(4) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (**'PIT Regulations'**).
2. In view of the above, SEBI initiated adjudication proceedings against the Noticee to inquire and adjudge under section 15A(b) of SEBI Act, 1992 (hereinafter, referred to as **"SEBI Act"**) the alleged non-disclosure of sale of 2000 shares of KDDL by Dinesh.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. Adjudicating Officer was appointed vide order dated October 20, 2015 under Section 15-I read with Section 19 of the Securities and Exchange Board of India Act, 1992 (**'SEBI Act'**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (**'Adjudicating Rules'**), to inquire into and adjudge under Section 15A(b) of SEBI Act. Consequent to transfer of Adjudicating Officers, vide Office Order dated November 16, 2017, the proceedings are now being continued further for the aforesaid alleged violation against Dinesh.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

4. Vide letter dated July 20, 2016, a Notice of Approved Enforcement Action was issued to Dinesh informing the details of Adjudication Proceedings initiated against Dinesh in the matter of KDDL. Dinesh filed an application for settlement. The consent application was rejected.
5. A Show Cause Notice (**'SCN'**) in terms of provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act was issued on December 07, 2017 to Dinesh calling upon Dinesh to show cause as to why an inquiry should not be held

against it under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation.

6. In this regard, Dinesh, vide letter dated December 19, 2017 has submitted that

- a. *I deny the allegation that I have failed to file disclosure towards my transaction dated November 21, 2014 for sale of 2000 shares for a value of Rs. 5,19,800 to the exchange and have made a delayed disclosure to the Company in violation of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, with regard to the transaction.*
- b. *Vide my letter dated September 16, 2016, though belated, I have filed the necessary disclosures with the NSE and BSE under Regulation 13(4) read with Regulation 13(5) of PIT Regulation with regard to the subject transaction. Accordingly, forwarded a copy of disclosure (in Form D) filed to BSE and NSE vide letter dated September 13, 2016.*
- c. *I most humbly state that SEBI had issued a Notice of Approved Enforcement Action bearing number EFD/DRA-I/JS/RK/20469/2016 dated July 20, 2016. I further state that before the letter dated July 20, 2016, I was not aware that on November 21, 2014, the change in my holdings exceeded Rs. 5 lakhs in value. It is pertinent to note that it exceeded only by Rs. 19,800/-. The said fact skipped my attention. Therefore, there was an inadvertent lapse in filing the disclosure in Form D under Regulation 13(4) of PIT Regulations.*
- d. *Only upon receiving the Notice of Approved Enforcement Action that I went through my records and realized that the change in holdings exceeded Rs. 5 lakhs in value on November 21, 2014 by Rs. 19,800/-*
- e. *Accordingly, I promptly sought professional advice and have filed necessary disclosures in Form D in compliance of Regulation 13 (4) and 13(5) of PIT Regulations with Exchanges and the Company.*
- f. *The said lapse was unintentional and not in defiance of any law. I have neither made any gains out of the said transaction nor have I taken any undue advantage from the said lapse nor has any investor suffered any loss.*
- g. *I most humbly submit that needless to say that neither the sale of mere 2000 shares nor mere 0.33% change in shareholding on account of subject transaction could possibly have any kind of impact on market or investors.*
- h. *I further state that the lapse is non repetitive in nature. It was merely technical lapse and I most humbly pray that the said lapse be condoned.*
- i. *No adverse inference be drawn there from and proceedings against me be dropped.*

*Accordingly, sought personal hearing in the matter.*

7. Subsequently, as requested, the Noticee was granted a personal hearing on January 18, 2018. On the date of hearing Authorised representative of ('AR') appeared and reiterated the submissions made vide letter dated December 19, 2017. Further, AR has submitted that further written submissions shall be provided by January 22, 2018.

8. Pursuant to hearing, Dinesh, vide letter dated January 18, 2018, has submitted that:

- a. *I have already filed form D with the Company on September 13, 2016 with BSE and NSE on September 16, 2016 as due compliance.*

- b. *I humbly submit that no disproportionate gain or unfair advantage has accrued to me and that no loss has been caused to any investor on account of the late filing for alleged violation of PIT regulations.*
- c. *Further there is no other action taken against me in my dealing in shares of KDDL Ltd.*

#### **CONSIDERATION OF ISSUES AND FINDINGS:-**

9. Charges levelled against Dinesh as per SCN, submissions of Dinesh in reply to SCN, and the documents available on record have been perused. The issues that arise for consideration are :
- a) Whether, Dinesh had violated the respective provisions as alleged in the SCN?
  - b) If yes, does the violation, on the part of the Dinesh attract monetary penalty under section 15A(b) of SEBI Act?
  - c) If yes, what quantum of monetary penalty should be imposed on the Dinesh taking into consideration the factors mentioned in Section 15J of the SEBI Act?

#### ***Issue a) Whether, Noticee have violated the respective provisions as alleged in the SCN?***

10. Before proceeding further, the relevant provisions are being referred to below:

##### **PIT Regulations**

***Disclosure of interest or holding in listed companies by certain persons- Initial Disclosure.***

***Continual disclosure.***

*13(4) Any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) 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.*

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*13 (5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two workings 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.*

11. Dinesh, Whole Time Director of KDDL, on November 21, 2014 sold 2000 shares of KDDL for a value of Rs. 5,19,800. As per Regulation 13(4), any person who is a director or officer of a listed company is required to disclose to KDDL and to the stock exchange the change in shareholding if the change exceeds Rs. 5 lac in value or 25000 shares or 1% of total shareholding or voting rights, whichever is lower.

12. Dinesh, being Director sold 2,000 shares for a value of Rs. 5,19,800, which exceeded the benchmark limit as prescribed under Regulation 13(4) of PIT Regulations in terms of value of shares. Thus, Dinesh in terms of law was required to disclose change in his shareholding to KDDL and to the stock exchanges within two days from the date of sale of shares under Regulation 13(4) read with Regulation 13(5) of PIT Regulations, which he has not complied with.
13. Dinesh has stated that he filed disclosures to BSE and NSE vide letter dated September 16, 2016, for a transaction dated November 21, 2014 which is clearly belated and is an admitted fact. Further the disclosures seem to be filed after the receipt of the notice of enforcement actions issued by SEBI.
14. Thus, it is clear from the facts that indeed the appropriate disclosures were not made at the relevant point of time.

***Issue b) If yes, does the violation, on the part of the Dinesh attract monetary penalty under section 15A(b) of SEBI Act?***

15. It is to be mentioned that admittedly there is a delay in complying with the provisions of disclosure in the said matter.
16. The only point Dinesh, emphasizes in submissions is that, the change in his holdings exceeded Rs. 5 lakhs in value by only Rs. 19,800, which had skipped his attention, there was an inadvertent lapse in filing the disclosure which was unintentional and not in defiance of any law. Further, Dinesh stated that he neither had made any gains out of the said transaction nor undue advantage from the said lapse nor has any investor suffered any loss.
17. It is pertinent to state that timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. It is clear that when mandatory time period is stipulated for a doing a particular activity, it must be complied within the said period to serve the purpose and delayed compliance would not absolve Dinesh. The sole purpose of such disclosure by the promoters is enshrined in the provisions to bring transparency by dissemination of complete information to the investors at large by the buyer/seller of shares without any delay.
18. At this juncture, I would like to quote the order of Hon'ble Securities Appellate Tribunal (SAT) in G. Suresh vs. SEBI dated 29.04.2014, wherein it was held that *"True and timely disclosures by an acquirer of shares in a company are an important regulatory tool intended to serve a public purpose of disseminating this information to the company as well as to Stock Exchange expeditiously. Such*

*disclosures are very important as they help investors to take an informed decision in investing in the scrip of said company."*

19. The aforesaid delay in filing the disclosure makes the Noticee liable for penalty under Section 15A(b) of the SEBI Act which is reproduced below:

*"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,—*

*...*

*(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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;"*

20. At this juncture, I would like to quote the judgement of the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund (Appeal no. 9523-9524)** decided on May 23, 2006, is very clear that "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...".

21. Based on the above it is determined that it is a fit case for imposition of monetary penalty on Dinesh.

***Issue c) If yes, what quantum of monetary penalty should be imposed on the Dinesh taking into consideration the factors mentioned in Section 15J of the SEBI Act?***

22. While determining the quantum of penalty under section 15A(b), it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

***"Factors to be taken into account by the adjudicating officer***

**15J.** *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."*

23. The available records neither reveals any disproportionate gains/ unfair advantage made by Dinesh, the specific loss suffered by the investors due to such violations and nor has such allegations been made against Dinesh. As held above the violation was triggered due to a transaction in November 2014 and belated disclosure in September 2016.

24. The factors set out in the Order of the Hon'ble Securities Appellate Tribunal in *Ashok Jain V. SEBI (Appeal no. 79 of 2014 decided on June 09, 2014)*, have been considered as under *"..... Under SAST Regulations, 1997 as also under SAST Regulations, 2011 disclosures are liable to be made within specified days irrespective of the scrip being traded on the Exchange or not. Similarly, disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non-disclosure within the time stipulated under those regulations..."*
25. As regards the delayed disclosures made, the Hon'ble Securities Appellate Tribunal in the matter of *Yogi Sungwon (India) Ltd. Vs SEBI* dated May 04, 2001 in the appeal No. 36 of 2000 has observed that: *".....that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance and not delay."*
26. As regards the contention that due to non-disclosures no loss has been caused to the investors, the issue was dealt by Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Komal Nahata Vs. SEBI* dated January 27, 2014 has held that: *"..argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure."*
27. Therefore, taking into consideration the facts / circumstance of the case and above factors, a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

## **ORDER**

28. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, in exercise of the powers conferred upon me under Section 15-I(2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, it is concluded that the proceedings against the Noticee stands established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, a monetary penalty of Rs. 3,00,000 (Rupees Three lakhs) is imposed upon Dinesh Agrawal under Section 15A(b) of SEBI Act, 1992.
29. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

| <b>Account No. for remittance of penalties levied by Adjudication Officer</b> |  |
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| 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  |

**30.** The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - IV [ EFD1-DRA-I ], SEBI Bhavan, Plot No.C4-A, ' G' Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

1. Case Name :
2. Name of 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)

**31.** In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Noticee and also to the SEBI.

**Date: January 29, 2018**  
**Place: Mumbai**

**Jeevan Sonparote**  
**Adjudicating Officer**