

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No.: EAD-2/SS/VS/2018-19/1392]

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:

Mr. Arif Memon (PAN No. ABCPM1438M)

In the matter of

KGN Industries Limited

1. During examination in the scrip of KGN Industries Limited (hereinafter referred to as 'KGN / the company'), a company listed on the Bombay Stock Exchange Limited (BSE), Securities and Exchange Board of India (SEBI) observed that Mr. Arif Memon, one of the promoters and the Managing Director of the company, had acquired 43,76,533 (1.97% of total share capital of KGN) during the period January 16, 2012 to March 27, 2012.
2. BSE had, vide its email dated March 18, 2016, submitted that as per its records, no disclosures were received from Mr. Arif Memon under regulation 13(4) and regulation 13 (4A) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations') with regard to his aforesaid acquisitions.
3. KGN had, vide its email dated April 04, 2016 provided the details of changes in shareholding of Mr. Arif Memon for the period from January 01, 2012 to March 31, 2012 and corresponding disclosures made by him to it.
4. Based on the aforesaid information provided by BSE and KGN, SEBI observed that the status of disclosures made by Mr. Arif Memon to the company and BSE as follows:

Sr. No.	Date of acquisition	Shareholding pre-acquisition	No. of shares acquired (value)	Shareholding post-acquisition	Disclosure under PIT Regulations	
					To Company	To BSE
1	16/01/2012	10000	278685	288685	Yes	No
2	17/01/2012	288685	260290	548975	Yes	No
3	18/01/2012	548975	75000	623975	Yes	No
4	19/01/2012	623975	21849 (Rs. 595487.40)	645824	Yes	No

Sr. No.	Date of acquisition	Shareholding pre-acquisition	No. of shares acquired (value)	Shareholding post-acquisition	Disclosure under PIT Regulations	
					To Company	To BSE
5	20/01/2012	645824	23696 (Rs. 682563.25)	669520	Yes	No
6	24/01/2012	669520	70602	740122	Yes	No
7	27/01/2012	740122	117500	857622	Yes	No
8	06/02/2012	857622	200000	1057622	Yes	No
9	07/02/2012	1057622	379154	1436776	Yes	No
10	08/02/2012	1436776	179501	1616277	Yes	No
11	09/02/2012	1616277	332558	1948835	Yes	No
12	10/02/2012	1948835	451708	2400543	Yes	No
13	14/02/2012	2400543	72000	2472543	Yes	No
14	22/02/2012	2473343	34000	2507343	Yes	No
15	29/02/2012	2507343	85000	2592343	24 days (Delayed disclosure on 26/03/2012)	No
16	01/03/2012	2592343	200232	2792575	21 days (Delayed disclosure on 26/03/2012)	No
17	02/03/2012	2792575	69700	2862275	20 days (Delayed disclosure on 26/03/2012)	No
18	05/03/2012	2862275	127093	2989368	19 days (Delayed disclosure on 26/03/2012)	No
19	13/03/2012	2989368	25000	3014368	11 days (Delayed disclosure on 26/03/2012)	No
20	14/03/2012	3014368	171260	3185628	10 days (Delayed disclosure on 26/03/2012)	No
21	15/03/2012	3185628	61800	3247428	07 days (Delayed disclosure on 26/03/2012)	No
22	20/03/2012	3247428	507900	3755328	04 days (Delayed disclosure on 26/03/2012)	No
23	21/03/2012	3755328	150000	3905328	03 days (Delayed disclosure on 26/03/2012)	No
24	22/03/2012	3905328	197535	4102863	Yes	No

Sr. No.	Date of acquisition	Shareholding pre-acquisition	No. of shares acquired (value)	Shareholding post-acquisition	Disclosure under PIT Regulations	
					To Company	To BSE
25	23/03/2012	4102863	268670	4371533	Yes	No

5. Based upon the above, it has been alleged that out of aforesaid 25 acquisitions, Mr. Arif Memon had made timely disclosures with respect to the 16 acquisitions and delayed disclosures in the range of 03 to 24 days for 9 acquisitions to the company under regulation 13(4) and regulation 13 (4A) read with regulation 13(5) of PIT Regulation. However, he did not make any disclosure at all to BSE with regard to any of the aforementioned acquisitions.
6. SEBI felt satisfied that there are sufficient grounds to adjudicate upon the alleged violations by Mr. Arif Memon and by a communication—order dated June 27, 2018 appointed undersigned as Adjudicating Officer (AO), to adjudge under section 15A (b) of the SEBI Act for the alleged violations of the provisions of regulation 13(4) and regulation 13(4A) read with regulation 13(5) of PIT Regulations by Mr. Arif Memon with respect to the aforesaid change in his shareholding in the company. The relevant provisions of PIT Regulations charged in this case are reproduced hereinafter:

PIT Regulations, 1992

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 ₹5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

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 ₹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.

7. Accordingly, on receipt of records on July 13, 2018 show cause notice no. EAD-2/SS/VS/20462/2018 dated July 20, 2018 (SCN) was issued to Mr. Arif Memon (the Noticee) 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. By the SCN, the Noticee was called upon to show cause as to why an inquiry should not be held against him 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.
8. The SCN was duly served upon the Noticee. After seeking further time, the Noticee submitted his reply dated September 04, 2018 and also availed the opportunity of personal hearing in the matter on September 18, 2018 when his authorised representative Mr. Sudeshkumar V. Joshi reiterated the reply of the Noticee and sought 3 days' time to produce evidence with regard to claim that disclosures were made to BSE. Vide email dated September 21, 2018, the authorized representative provided evidence relied upon by the Noticee to show disclosures with respect to 10 acquisitions in addition to the evidence already provided in this respect along with reply dated September 04, 2018. The reply and submissions are summarised as under:-
- a) That delayed disclosures have been made by the Noticee to the Company for 9 out of 25 transactions as alleged in the SCN but such delays which are in the range of 03 to 24 days were inadvertent and unintentional.
 - b) That the Noticee had made timely disclosures to BSE also with regard to the 16 of the 25 impugned acquisitions and delayed disclosures with regard to remaining 9 transactions for which delayed disclosures were made to the company as stated above.
 - c) Based on the disclosures made by the Noticee to the company, the company had made the disclosures regarding his all acquisitions to BSE. Though there were some delayed disclosures by the Noticee to the BSE, disclosures for all the 25 acquisitions had been made by the company to the BSE. This clearly conveys that there was no *mala fide* on the part of the Noticee in delayed disclosures/non-disclosures.
9. I have considered the allegations levelled in the terms of reference, the aforesaid submissions of the Noticee and the relevant material available on record. The Noticee has admitted his acquisitions impugned in this case. It is undisputed fact that the Noticee is one of the promoters and the Managing Director of the company. It is also admitted position that the disclosure obligations in this case were triggered on account of change in shareholding of the Noticee as promoter and director of the company. The only question that remains to be answered in this case is as to whether

the Noticee made disclosures in terms of the provisions of regulation 13(4) and (4A) read with regulation 13(5) of the PIT Regulations. On careful perusal of regulation 13(4) and (4A) it is noted that in the facts and circumstances of this case, both the provisions obligated the Noticee to make identical disclosures in Form D to the company and BSE. Such disclosures were to be made within 2 days of each of the acquisitions. In this case, admittedly the Noticee had made disclosures to the company with regard to all his impugned acquisitions out of which the disclosures with respect to 9 acquisitions as mentioned hereinabove were made with delay of 03 to 24 days.

10. I have perused the evidence relied upon by the Noticee in support of his claim that he had made timely/delayed disclosures to BSE under regulation 13(4) and 13(4A) of PIT Regulations. It is noted that the Noticee has produce copies of letters written by it to BSE on different dated pursuant to his 24 acquisitions, enclosing therewith Form B as stipulated under regulation 13(2) and 13(6) of PIT Regulations. In all his letter he has informed and declared to BSE the number of shares acquired and the date of acquisitions. It is noted that while making such declaration / provided such information the Noticee had provided Form B as stipulated under regulation 13(2) and 13(6) of PIT Regulations and not in Form D specified under regulation 13(4) and 13(4A) of PIT Regulations. Further, I note from the BSE website that BSE had received the disclosures of aforementioned acquisitions under 13(6) of PIT Regulations. Such disclosures to BSE is noted as under:

Sr. No.	Date of acquisition	Shareholding pre-acquisition	Shareholding post-acquisition	Date of disclosure to BSE by the Noticee in Form B	Remarks/Status
1	16/01/2012	10000	288685	18/01/2012	Timely disclosures
2	17/01/2012	288685	548975	18/01/2012	Timely disclosures
3	18/01/2012	548975	623975	19/01/2012	Timely disclosures
4	19/01/2012	623975	645824	23/01/2012	Timely disclosures
5	20/01/2012	645824	669520	23/01/2012	Timely disclosures
6	24/01/2012	669520	740122	-	No evidence provided
7	27/01/2012	740122	857622	30/01/2012	Timely disclosures
8	06/02/2012	857622	1057622	10/02/2012	02 days (Delayed disclosure on 10/02/2012)
9	07/02/2012	1057622	1436776	28/02/2012	19 days (Delayed disclosure on 28/02/2012)
10	08/02/2012	1436776	1616277	10/02/2012	Timely disclosures
11	09/02/2012	1616277	1948835	10/02/2012	Timely disclosures
12	10/02/2012	1948835	2400543	13/02/2012	Timely disclosures

Sr. No.	Date of acquisition	Shareholding pre-acquisition	Shareholding post-acquisition	Date of disclosure to BSE by the Noticee in Form B	Remarks/Status
13	14/02/2012	2400543	2472543	15/02/2012	Timely disclosures
14	22/02/2012	2473343	2507343	23/02/2012	Timely disclosures
15	29/02/2012	2507343	2592343	27/03/2012	25 days (Delayed disclosure on 27/03/2012)
16	01/03/2012	2592343	2792575	27/03/2012	22 days (Delayed disclosure on 27/03/2012)
17	02/03/2012	2792575	2862275	27/03/2012	21 days (Delayed disclosure on 27/03/2012)
18	05/03/2012	2862275	2989368	27/03/2012	20 days (Delayed disclosure on 27/03/2012)
19	13/03/2012	2989368	3014368	27/03/2012	12 days (Delayed disclosure on 27/03/2012)
20	14/03/2012	3014368	3185628	27/03/2012	11 days (Delayed disclosure on 27/03/2012)
21	15/03/2012	3185628	3247428	27/03/2012	08 days (Delayed disclosure on 27/03/2012)
22	20/03/2012	3247428	3755328	27/03/2012	05 days (Delayed disclosure on 27/03/2012)
23	21/03/2012	3755328	3905328	27/03/2012	04 days (Delayed disclosure on 27/03/2012)
24	22/03/2012	3905328	4102863	27/03/2012	Timely disclosures
25	23/03/2012	4102863	4371533	27/03/2012	Timely disclosures

11. From the disclosures available with regard to aforesaid acquisitions on BSE website it is noted that the acquisition dated January 24, 2012 was disclosed on BSE website within stipulated time on January 25, 2012. Thus, it is noted that the Noticee had made above disclosures in Form B to BSE with regard to all his impugned acquisitions out of which the said disclosures with respect to 11 acquisitions as mentioned hereinabove were also made with delay of 02 to 25 days. It is also noted that the information required in Form D specified in regulation 13 (4) and 13 (4A) is wider than information required in Form B under regulation 13 (2) and 13 (6). In this case, the material disclosure with regard to number and % age of pre and post-acquisition shareholding was not disclosed while making disclosure's on different dates as claimed. I note that the main factor which

distinguish between Form B and Form D is the disclosure of “*Number and % of share / voting rights post acquisition / sale*”. In my view, this is a crucial information required in Form D and is material to enable the investor to take informed decision and regulators to monitor the consolidation of holding by promoters / acquirers. Further, the delayed disclosures in whatever manner cannot be condoned.

12. In view of the above, I hold that the Noticee had made delayed disclosures to the company under regulation 13(4) and 13(4A) of PIT Regulations in respect of 9 acquisitions and the delay was in the range of 3 to 24 days. Further, the Noticee had failed to make complete disclosures required under 13 (4) and 13 (4A) to BSE and the disclosures made by him were delayed by 02 to 25 days in respect of 11 acquisitions. It is relevant to mention that 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 this case, the Noticee being promoter and managing director of the company had been repeatedly acquiring and consolidating his shareholding in the company without providing complete and timely information to public and regulators in substantial number of instances. In the facts and circumstances of this case, I am of the view that such defaults attract the liability to pay penalty as prescribed under Section 15A(b) of the SEBI Act which provides as follows:

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

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, the Noticee had made substantial disclosures in large number of acquisitions as found hereinabove. He had been making declaration about number of shares acquired by him in the company in large number of instances. This facts suggest that he had no design or plan to conceal the information. Subsequent disclosures on BSE website could also be a mitigating factor. From the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default cannot be computed. However, timely disclosures to the company and the stock exchange as required under the PTT Regulations, are of significant importance from the point of view of the investors and regulators. The repeated failure as found in this case, had clearly defeated the purposes of regulations.
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 ₹ 2,00,000/- (Rupees Two Lakh only) on the Noticee viz. Mr. Arif Memon under section 15A(b) 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 following table 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

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: September 28, 2018

Place: Mumbai

Santosh Shukla

**Chief General Manager &
Adjudicating Officer**