

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/DSR/RG/ 148- 154 /2014]

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

- 1. Kirtibhai Chhaganbhai Patel [PAN: ABXPP3628D]**
- 2. Aditya Yogeshbhai Patel [PAN: ALYPP7473R]**
- 3. Kyati Realities Limited [PAN: AAACK8006B]**
- 4. Khyati Multimedia Entertainment Limited [PAN: AAACK8579R]**
- 5. Kartikbhai J Patel HUF [PAN: AABHP3576P]**
- 6. Kamalkant R Rao [PAN: ANJPR5337F]**
- 7. Radheshyam R Lodh [PAN: ACOPL5618B]**

In the matter of

Kanel Oil and Exports Industries Limited

Background:

- 1. Securities and Exchange Board of India (hereinafter referred to as SEBI) examined into the irregularities observed in the matter of Kanel Oil and Exports Industries Ltd (hereinafter referred to as KOEIL / Company) and into possible violation of the provisions of the SEBI Act, 1992 and various rules and regulations made there under during the period from October 21, 2011 to July 30, 2012.**
- 2. The examination revealed that KOEIL is a listed company on Bombay Stock Exchange (BSE). Kirtibhai Chhaganbhai Patel and Aditya Yogeshbhai Patel**

(hereinafter referred to as Noticee Nos. 1 and 2) were the Additional Directors in the company. Further, Kyati Realities Limited, Khyati Multimedia Entertainment Limited, Kartikbhai J Patel HUF, Kamalkant R Rao and Radheshyam R Lodh (hereinafter referred to as Noticee Nos. 3 to 7) were the major acquirers during the relevant period and were allegedly deemed as Persons Acting in Concert (PACs) as defined under Regulation 2(1)(q)(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the "SAST Regulations, 2011") based on the relationship of the said Noticees with each other.

3. During the examination period it was observed that, Noticee Nos. 3 to 7 had acquired shares of KOEIL. Upon acquisition of 4,50,000 shares by Noticee No. 5 (i.e. Kartikbhai J Patel HUF) on April 11, 2012, the collective shareholding of the PACs increased to more than 5% shares, thereby, requiring them to make necessary disclosures as prescribed under Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations, 2011. However, it was observed that no disclosures were made by the Noticees under the SAST Regulations, 2011.
4. Further, Noticee Nos. 1 and 2 were appointed as Additional Directors in the company w.e.f April 16, 2012. On the date of appointment, Noticee No. 1 was holding 3,50,000 shares and Noticee No. 2 was holding 1,75,010 shares of KOEIL. However, it was observed that the necessary disclosures as prescribed under Regulation 13(2) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations, 1992") of their holdings in the company were made to KOEIL by the Noticees belatedly i.e. only on October 25, 2012, thereby, violating the provisions of Regulation 13(2) of the PIT Regulations, 1992.

Appointment of Adjudicating Officer:

5. SEBI has, therefore, initiated adjudication proceedings and I have been appointed as the Adjudicating Officer (AO) vide order dated December 24, 2013 under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules,

1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15A(b) of the Act, the alleged violation of the abovementioned provisions of PIT Regulations, 1992 by Noticee Nos. 1 and 2 and the alleged violation of the abovementioned provisions of the SAST Regulations, 2011 by Noticee Nos. 3 to 7.

Notice, Reply & Personal Hearing:

6. Accordingly, a common notice dated February 07, 2014 (hereinafter referred to as the 'SCN') was issued to the Noticees in terms of Rule 4 of the Adjudication Rules requiring them to show cause as to why an inquiry should not be held against them for the alleged violations. The SCNs were duly delivered to all. As no replies were received from the Noticees, in the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, vide notice dated March 21, 2014, an opportunity of personal hearing was granted to Noticee Nos. 1 to 7 on April 11, 2014. In the meantime, vide separate letters dated 24th & 25th March 2014, Noticee Nos. 1 to 7 requested for extension of time to file their respective replies to the SCN. Further, on the scheduled date of personal hearing, the authorized representative of the Noticees attended the said hearing and made oral submissions. The representative further submitted separate replies of the Noticees to the SCN and reiterated the submissions made therein.
7. Further, a supplementary show cause notice dated May 22, 2014 was issued to the Noticees due to some inadvertent error in the relationship chart. The said notice was duly delivered. However, the Noticees did not file any reply to the same. Therefore, an opportunity of personal hearing was granted to them on July 07, 2014 vide notice dated June 23, 2014. Thereafter, vide separate letters, the Noticees filed their respective replies to the supplementary show cause notice. Further, the authorized representative attended the hearing on the scheduled date on behalf of the Noticees and reiterated the submissions made by the Noticees in their replies.

Consideration of Issues, Evidence and Findings:

8. I have carefully perused the charges against the Noticees as per the SCN /supplementary SCN, oral and written submissions made by the Noticees and the material as available on record. The issues that arise for consideration in the present case are:

(i) Whether Noticee Nos. 1 and 2 have violated the provisions of Regulation 13(2) of the PIT Regulations, 1992?

(ii) Whether Noticee Nos. 3 to 7 have violated the provisions of Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations, 2011?

(iii) Does the violation, if any, on the part of the Noticees attract any penalty under Sections 15A(b) of the Act?

(iv) If yes, what should be the quantum of penalty?

9. At this juncture, it will be appropriate to refer to the relevant provision which reads as under:-

Relevant provisions of PIT Regulations:-

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure

13(2) Any person who is a director or officer of a listed company shall disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents (as defined by the company), within two working days of becoming a director or officer of the company.

Relevant provisions of SAST Regulations:-

Disclosure of acquisition and disposal.

29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

10. I find from the examination report that KOEIL is a listed company on Bombay Stock Exchange (BSE). The Noticee Nos. 1 and 2 are the Additional Directors in the company. Further, the Noticee Nos. 3 to 7 were the major acquirers during the relevant period and were deemed as Persons Acting in Concert (PACs) as defined under Regulation 2(1)(q)(2) of the SAST Regulations, 2011 based on the relationship of the said Noticees with each other. The relationship details are as under:

Sr. No.	Name and address of entity	Relationship
1.	Khyati Realities Ltd	1. Khyati Realities Ltd (Noticee No. 3) and Khyati Multimedia Entertainment Ltd (Noticee No. 4) have common/similar address.
2.	Khyati Multimedia Entertainment Ltd	
3.	Kartikbhai J Patel HUF	2. The companies at Sr. Nos. 1 and 2 i.e. Noticee Nos. 3 and 4 have common email id- khyatimulti@yahoo.com .
4.	Kamalkant R Rao	
5.	Radheshyam R Lodh	3. Further, Kartikbhai J Patel (Karta of Kartikbhai J Patel HUF i.e. Noticee No. 5) and Kamalkant R Rao (Noticee No. 6) are common directors of Khyati Realities Ltd (Noticee No. 3) and Khyati Multimedia Entertainment Ltd. (Noticee No. 4).

		4. Mr. Radheshyam Lodh (Noticee No. 7) is a director of Khyati Realities Ltd. (Noticee No. 3)
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11. I further note from the demat statements and data obtained from the registrar of shares that Noticee Nos. 3 to 7 had acquired shares of KOEIL during the examination period. Upon acquisition of 4,50,000 shares by Noticee No. 5 (Kartikbhai J Patel HUF) on April 11, 2012, the collective shareholding of the PACs increased by more than 5% shares, thereby, requiring the Noticees to make the necessary disclosures as prescribed under Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations, 2011. However, it was alleged in the SCN that upon acquisition of the said shares, no disclosures were made by the Noticees. The details of the said acquisition are as under:

Sr. No.	NAME	Holding as on June 30, 2012	% of total paid up capital	Date(s) of acquisition of shares
1	Radheshyam R Lodh	204110	1.11	28-03-2012 – 2,04,110 shares (1.11%)(Date of transfer of physical shares in the entity's name)
2	Kamalkant R Rao	350000	1.9	28-03-2012 – 3,50,000 shares (1.9%)(Date of transfer of physical shares in the entity's name)
3	Kartikbhai J Patel HUF	463000	2.51	11-04-2012 - 4,50,000 shares(2.44%); 13-04-2012 - 13,000 shares(0.07%)
4	Khyati Multimedia Entertainment Ltd	543000	2.95	26-04-2012 - 5,43,000 shares (2.95%)
5	Khyati Realities Ltd	556000	3.02	29-04-2012 - 5,56,000 shares(3.02%)

- 12.** Further, I find that Noticee Nos. 1 and 2 were appointed as Additional Directors of KOEIL w.e.f April 16, 2012. It was observed that on the date of appointment, Noticee No. 1 was holding 3,50,000 shares and Notice No. 2 was holding 1,75,010 shares. However, the necessary disclosures as prescribed under Regulation 13(2) of the PIT Regulations, 1992 of their holdings in the company were made by Noticee Nos. 1 and 2 belatedly i.e. only on October 25, 2012. It is, therefore, alleged that Noticee Nos. 1 and 2 being Additional Directors of the company had violated the provisions of Regulation 13(2) of the PIT Regulations, 1992.
- 13.** Vide separate but identical replies dated March 07 and March 09, 2014, Noticee Nos. 1 and 2 submitted that the shares of KOEIL are not only listed on BSE but also on Ahmadabad Stock Exchange (ASE). With respect to the allegation of delayed disclosure made to the company, they stated that the disclosures of their respective shareholding in the company were made well within the prescribed time limit by them. However, no documentary evidence showing the proof of disclosures being made by them has been produced by the said Noticees.
- 14.** Noticee Nos. 3 and 4 submitted their separate but identical replies vide letters dated April 03, 2014 and April 07, 2014, respectively. The Noticee Nos. 3 and 4 have denied having any relation with any of the other Noticees and also of having violated the provisions of SAST Regulations, 2011. Further, they have stated that their offices are situated in the state of Gujarat in Ahmadabad city and are in multi storied building having many other offices and shops. Therefore, the relationship arrived at on the basis of having common addresses cannot be accepted.
- 15.** Further, Noticee Nos. 5 to 7 have again submitted separate but identical replies vide letters dated April 08, 2014 and April 09, 2014, respectively. The Noticee Nos. 5 to 7 have denied having any relation with each other or any of the other Noticees and also of having violated the provisions of SAST Regulations, 2011. The Noticees have accepted acquisition of shares of KOEIL during the relevant period. However, as the relationship between the

Noticees has been denied by them, they submit that they have not violated any of the provisions of SAST Regulations, 2011 by acquiring the said shares.

16. Additionally, in reply to the supplementary show cause notice dated May 22, 2014, the Noticees reiterated the submissions made in their previous replies. They all denied being connected to each other.

17. I have perused the documents available on record. It is important to refer to the definitions of 'persons acting in concert' and 'persons deemed to be acting in concert' as defined under Regulation 2(1)(q)(1) and 2(1)(q)(2) of the SAST Regulations, 2011 which reads as under:

2. (1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions and variations shall be construed accordingly,—

(q) “persons acting in concert” means,—

(1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.

(2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—

(i) a company, its holding company, subsidiary company and any company under the same management or control;

(ii) a company, its directors, and any person entrusted with the management of the company;

(iii) directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;

(iv) promoters and members of the promoter group;

(v) immediate relatives;

(vi).....

(vii).....

18. Now, considering the present case, it can be seen from Regulation 2(1)(q)(2) of the SAST Regulations that the categories of persons deemed to be persons acting in concert comprises (relevant for the present case) -

- a company, its holding company, subsidiary company and any company under the same management or control
- a company, its directors, and any person entrusted with the management of the company;
- directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;

19. The above definition makes it amply clear that the Noticee Nos. 3 to 7 do fall under the category of persons deemed to be PACs. The relationship details as tabulated in Para No. 10 above show that Noticee Nos. 3 and 4 are related to each other by way of having common directors i.e. Noticee Nos. 5 and 6. Further, Noticee No. 7 is the director of Noticee no. 3. The Noticees did acquire shares of KOEIL during the relevant period and therefore, can be said to have common intent of acquiring substantial shares of the company. I do not find merit in the submissions of Noticee Nos. 3 to 7 with respect to denial of relationship between them as, Noticee Nos. 2 and 3 may not be treated as PACs by way of having common addresses or having common e-mail IDs but mainly by having common directors i.e. Noticee Nos. 5 to 7. In view of the same, the submissions of the Noticees that they do not fall under the category of persons deemed to be PACs in terms of Regulation 2(1)(q)(2) of the SAST Regulations, 2011 fails. In view of the above, I conclude that the Noticees are PACs in terms of Regulation 2(1)(q)(2) of the SAST Regulations, 2011.

20. I find that upon acquisition of 4,50,000 shares by Noticee No. 5 (Kartikbhai J Patel HUF) on April 11, 2012, the collective shareholding of the PACs did increase by more than 5% shares which required them to make the necessary disclosures as prescribed under Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations, 2011. Therefore, I conclude that the Noticee Nos. 3 to 7 have failed to make the necessary disclosures

and have thus, violated the abovementioned provisions of law warranting monetary penalty as prescribed under Section 15A(b) of the SEBI Act, 1992.

21. I further find that Noticee Nos. 1 and 2 are the Additional Directors in KOIEL and that Noticee No. 1 was holding 3,50,000 shares and Notice No. 2 was holding 1,75,010 shares. I do not find merit in the submissions of the Noticees that they had made the necessary disclosure as required under the PIT Regulations, 1992 much before the prescribed time line in as much as they have not produced any documentary evidence in support of their submission. I also find from the material available on record that KOIEL vide its e-mail dated October 29, 2012 has informed SEBI that Noticee Nos. 1 and 2 had made the necessary disclosures only on October 25, 2012. In view of the same, I conclude that the necessary disclosures as prescribed under the PIT Regulations, 1992 were made by Noticee Nos. 1 and 2 belatedly i.e. only on October 25, 2012 and thus, have violated Regulation 13(2) of the said Regulations attracting monetary penalty under Section 15A(b) of the SEBI Act, 1992.

22. Section 15A(b) of the Act reads as under:

15A. Penalty for failure to furnish information, return, etc.

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.

23. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Funds [2006] 68 SCL (216) SC held that " once a violation of statutory regulation is established, imposition of penalty becomes sine qua non of violation and the intention of the parties committing such violation becomes totally irrelevant. Once the contravention is established then penalty is to follow".

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

25. I observe that from the material available on record, it is difficult to quantify any gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default of the Noticees. The defaults are not repetitive in nature.

ORDER

26. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalties:

Name of the Noticee	Regulations violated	Penal Provisions (as per SEBI Act, 1992)	Amount of Penalty (in ₹)
Kirtibhai Chhaganbhai Patel	Regulation 13(2) of the PIT Regulations	15A (b)	5,00,000
Aditya Yogeshbhai Patel	Regulation 13(2) of the PIT Regulations	15A (b)	5,00,000
TOTAL			10,00,000

Name of the Noticee	Regulations violated	Penal Provisions (as per SEBI Act, 1992)	Amount of Penalty (in ₹)
Kyati Realities Limited	Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations, 2011	15A (b)	8,00,000 to be paid jointly and severally
Khyati Multimedia Entertainment Limited	Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations, 2011	15A (b)	
Kartikbhai J Patel HUF	Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations, 2011	15A (b)	
Kamalkant R Rao	Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations, 2011	15A (b)	
Radheshyam R Lodh	Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations, 2011	15A (b)	
TOTAL			8,00,000

27. In my view, the penalty is commensurate with the default committed by the Noticees. The penalty amounts as mentioned above shall be paid by the Noticees through a duly crossed demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, ISD, Securities and Exchange Board of India, Sebi Bhavan, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

28. In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to Noticees and also to Securities and Exchange Board of India.

Date: July 22, 2014

Place: Mumbai

**D. SURA REDDY
ADJUDICATING OFFICER**