

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-12/ AO/SM/PR/8/2017]**

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of:

1. M/s.KMF Builders and Developers Ltd (**PAN: AAACK8497L**)
2. Mr. Kasturi Lal Chadha, (**PAN: AAFPC6799M**)

In the matter of M/s. KMF Builders and Developers Ltd

Facts of the case:

1. Securities and Exchange Board of India ('SEBI'), pursuant to the alert generated by its Integrated Surveillance Department for suspected disclosure violations by the promoters of M/s.KMF Builders and Developers Ltd (hereinafter referred to as 'KMF'), a company listed at Bombay Stock Exchange Limited (BSE), conducted investigation for possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 ('Act') and various Rules and Regulations made there under during the investigation period from January 1, 2014 to May 31, 2014 (hereinafter referred to as the 'IP').
2. During the investigation, the following was observed:
 - 2.1 KMF had a share capital of 1, 21, 82,000 shares of Rs.5/- each and the promoters holding stood at 44.12% of the share capital of KMF for quarters ending December 31, 2013 and March 31, 2014. The details of promoters holding as disclosed on BSE website is as under:

Name	Dec-13		Mar-14	
	No.	%	No.	%
Madan Lal	2,05,000	1.68	2,05,000	1.68
Kasturi Lal Chadha	2,39,600	1.97	0	0
Sneh Lata	2,85,600	2.34	2,85,600	2.34
Gorve Chadha	3,73,400	3.07	3,73,400	3.07
Tanu Chadha	3,79,000	3.11	3,79,000	3.11
Manisha Chadha	3,89,000	3.19	6,28,600	5.16
Krishnawati	4,20,000	3.45	4,20,000	3.45
Malik Pradeep Kumar	4,20,200	3.45	4,20,200	3.45
Satyawati Chadha	4,31,000	3.54	4,31,000	3.54
KMF Ltd	5,02,000	4.12	5,02,000	4.12
Surender Kumar Chadha	5,20,200	4.27	5,20,200	4.27
Kavita Chadha	5,60,200	4.6	5,60,200	4.6
KMF Securities Ltd	6,50,000	5.34	6,50,000	5.34
Total	53,75,200	44.12	53,75,200	44.12

2.2 On March 29, 2014, Mr.Kasturi L Chadha (in short “KL Chadha”) (BOID: 1202290000198406) transferred 2,39,600 shares to Ms. Manisha Chadha (BOID:IN30114311266787) through off market transaction. As a result, the holding of KL Chadha decreased from 2,39,600 shares (1.97% of the share capital of KMF) to nil shares during the period from January 01, 2014 to March 31, 2014. Consequently, KL Chadha, Manisha Chadha and KMF (“entities”) were under an obligation to disclose under SEBI (Prohibition of Insider Trading) Regulations, 1992 (“PIT Regulations, 1992”) read with SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations, 2015”).

- 2.3 In this regard, SEBI had advised KMF to provide the details of all the disclosures made to KMF during the period from January 01, 2014 to May 31, 2014 vide e-mail dated June 11, 2014 and June 23, 2014. Simultaneously, SEBI had also advised BSE to provide the details of disclosures received in the scrip of KMF during the IP.
- 2.4 Further, vide e-mail dated July 23, 2015, SEBI requested BSE to advise KMF to inform whether it had received any disclosures from the aforesaid entities. However, BSE, vide e-mail dated August 11, 2015 replied that KMF had not filed its reply even after repeated reminders.
- 2.5 Further, KMF vide letter dated August 4, 2015 had replied to BSE's email dated July 28, 2015 stated that disclosures received from Ms Manisha Chadha in Form A and Form D under Regulations 13(1) and 13(4A), respectively, of PIT Regulations, 1992.
3. The investigation, *inter alia*, revealed that KMF and KL Chadha had failed to make disclosures due to change in shareholding of KL Chadha and Manisha Chadha as required under PIT Regulations, 1992 read with PIT Regulations, 2015.

Appointment of Adjudicating Officer

4. SEBI has initiated adjudication proceedings against KMF & KL Chadha and appointed Shri D Sura Reddy as Adjudicating Officer vide order dated January 16, 2017 under Section 15 I of the Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge under Section 15A (b) of the Act for the alleged violation of the provisions of law by KMF and KL Chadha. Pursuant to the transfer of the case, I have been appointed as Adjudicating Officer (AO), vide order dated May 18, 2017.

Show Cause Notice, Reply and Personal Hearing

5. Based on the findings made during the investigation, a combined show cause notice dated February 06, 2017 (hereinafter referred to as 'SCN') was issued to KMF & KL Chadha under Rule 4(1) of the said Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on KL Chadha and

KMF under Section 15A (b) of the Act for the alleged violation of the provisions of law as detailed below:

“Shri Kasturi Lal Chadha has violated Regulation 13(4A) read with 13(5) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 and KMF has violated Regulation 13(6) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015”.

6. In response to SCN, KMF submitted its reply vide letter dated February 28, 2017 and made following submissions:

- 6.1 *From the records available with us, on March 29, 2014, one of our Promoter, Mr. Kasturi Lal Chadha transferred 2,39,600 shares to another promoter Ms. Manisha Chadha through off market transactions.*
- 6.2 *As a result of the aforementioned transactions, the holding of Mr. Kasturi Lal Chadha reduced (Nil) shares and the holding of Ms. Manisha Chadha increased to 6,28,600 shares*
- 6.3 *As per point no.3 of your notice, Mr. K L Chadha was under an obligation to disclose under Regulation 13(4A) of PIT Regulations, 1992.*
- 6.4 *As per Regulation 13(6) of PIT Regulations, 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),(3),(4) & (4A) in the respective formats specified in Schedule III.*
- 6.5 *In this regard, I would like to state you that Company's obligation to disclose the transactions to all the stock exchanges arises only after receipt of disclosures from seller and acquirer.*
- 6.6 *In this regard, I would like to further state, that the company have not received any disclosure from Mr. Kasturi Lal Chadha, the alleged violator of Regulation 13(4A) of PIT Regulations, 1992 as depicted by you in point no.3 of your notice dated 6th February, 2017.*
- 6.7 *As we have not received any disclosure, we are not in a obligation to send any disclosure as required under regulation 13(6) of PIT Regulation. Hence, request your goodself to take lenient view and drop any proceedings for inquiry pursuant to Rule 4 of SEBI (Procedure for Holding Inquiry & Imposing Penalties by Adjudicating Officer) Rules, 1995 against the company.*
- 6.8 *Regarding delay in our reply to your notice sent through e-mail(s), I wish to submit that since Ms.Shweta Gupta, compliance officer was in medical leave due to some exigencies, could not access the mails and other correspondence, inter alia, could not bring the same in the notice of Company, and therefore failed to respond your goodself in time without any malafide intention.*
- 6.9 *Our company is always law abiding and therefore file all returns, documents, and other information within the stipulated time allowed n law. This delay is purely unintentional and without any utive motive and in*

this regard we sincerely extend our apologies for the same and assured you future compliance in this regard.

- 6.10 *I hope the above is as per your requirements, in case you need any further information/documents, we will be happy to send you the same without any delay. Request again to drop any proceedings for inquiry in terms of Rule 4 of SEBI (Procedure for Holding Inquiry & Imposing Penalties by Adjudicating Officer) Rules, 1995 against the company.*
7. Further, KMF, in response to the hearing notice issued for hearing scheduled on June 20, 2017, vide letter dated June 13, 2017 acknowledged the receipt of the same and vide email dated June 13, 2017 requested to reschedule the date of hearing to June 27, 2017. The request of KMF was acceded to and another opportunity of personal hearing was granted to KMF on June 27, 2017 which was attended by Mr. Pradeep Kumar Debnath, Authorized Representative (AR) of KMF and the AR reiterated the submissions already made vide letter February 28, 2017.
8. The SCN and hearing notice sent to KL Chadha were returned undelivered. SEBI has made the following attempts to deliver SCN and hearing notice to KL Chadha. However, KL Chadha had neither submitted any reply to SCN nor availed the opportunity of personal hearing granted to him.
- SCN dated February 06, 2017 was sent at “1003 Vikram Towers, Rajendra Place, New Delhi- 110 008”, letter was return undelivered.
 - Hearing notice dated June 5, 2017 along with copy of SCN dated February 06, 2017 sent at “1003 Vikram Towers, Rajendra Place, New Delhi- 110 008”, was returned undelivered with remarks “Left w/o Add”
 - Since KL Chadha was one of the promoters of KMF, KMF was requested vide email dated June 12, 2017 to provide an alternative address of KL Chadha, if any, available with them and vide email dated June 15, 2017, KMF was directed to serve the copy of SCN on KL Chadha and to send the proof of serving. In response, KMF vide email dated June 20, 2017 forwarded the proof of dispatch.
 - Another notice of hearing dated June 15, 2017 for the hearing scheduled on June 27, 2017 was returned undelivered with remark “No such address”.
 - Again vide email dated June 20, 2017 KMF was reminded to forwarded the proof of serving of notice on KL Chadha.
 - Another notice of hearing dated June 29, 2017 was sent to “U-2, Green Park, New Delhi – 110 016” from the details obtained from publically available

information along with copy of SCN dated February 06, 2017 was returned undelivered.

- Further, AR of KMF during the hearing held on June 27, 2017 assured to serve the notice and forward the reply of KL Chadha by July 10, 2017
- Another email dated July 10, 2017 was sent to KMF advising it to forward the proof of serving of SCN and hearing notice. However, the courier slip forwarded by KMF did not bear any proof of delivery.
- In terms of Rule 7(c) of AO Rules, Hearing notice dated July 11, 2017 along with SCN was affixed at “1003 Vikram Towers, Rajendra Place, New Delhi- 110 008”, the last known address as per SEBI records, on July 18, 2017.
- As an abundant caution detail of notices were published in Delhi Edition of Times of India and Dainik Jagran on August 9, 2017 in terms of Rule 7(d) of AO rules and also made available on SEBI website.

9. In view of the attempts made by SEBI in serving the Notices, I am convinced that sufficient opportunities have been granted to KL Chadha and I deem it appropriate to decide the matter on the basis of material available on record and hence I proceed further.

Consideration of Issues, Evidence and Findings

10. I have carefully perused the charges levelled against KMF and KL Chadha in the SCN, written submissions & oral submissions made during the hearing and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

- I. Whether KL Chadha has violated Regulation 13(4A) read with 13(5) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 and KMF has violated Regulation 13(6) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015?**
- II. Does the violation, if any, on the part of KL Chadha & KMF attract monetary penalty under Section 15 A(b) of the Act?**

III. If so, what would be the quantum of monetary penalty that can be imposed on KL Chadha and KMF taking into consideration the factors mentioned in Section 15J of the Act?

11. Before proceeding further, I would like to refer to the relevant provisions of the PIT Regulations, 1992 and PIT Regulations, 2015 which read as under:

PIT Regulations, 1992

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

13(1) ...

(2).....

(3)

(4)

(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.

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.

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;

ISSUE I : Whether KL Chadha and KMF have violated Regulation 13(4A) read with 13(5) and 13(6) of PIT Regulations, 1992 read with Regulations 12 of PIT Regulations, 2015 respectively?

FINDINGS:

12 From the analysis of material available on record like SCN, replies of KMF and Emails of BSE, I find that:

a) KL Chadha has to make disclosures under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations 1992 read with Regulation 12 of PIT Regulations, 2015 and he has not made any disclosures which is apparent from

the replies of KMF and BSE and KL Chadha has not responded to any of my notices to inform otherwise .

- b) I note the following with regard to disclosure by KMF in the matter:
- i) Ms. Manisha Chadha had made disclosure in Form A under Regulation 13(1) of PIT Regulations, 1992. However, the said disclosure was not made by KMF to BSE under Regulation 13(6), which is evident from KMF's reply, BSE website and BSE's reply.
 - ii) KMF has made disclosure under Regulation 13(6) for the disclosure received in Form D made by Ms. Manisha Chadha under Regulation 13(4A) of PIT Regulations, 1992, which is evident from BSE's website and reply.
 - iii) Not made disclosure under Regulation 13(6) for the disclosure received in Form D of PIT Regulations, 1992 in respect of KL Chadha, which is also evident from replies of KMF and BSE.

Has KL Chadha violated PIT Regulations, 1992

- 13 From the records available, I am satisfied with the efforts taken by SEBI in serving the notices to KL Chadha and in providing him sufficient opportunity to defend the allegations levelled against him. I rely on the observation of *Hon'ble SAT in the matter of Sanjay Kumar Tayal & Ors. Vs. SEBI (in appeal No. 68/2013) decided on February 11, 2014 wherein SAT has observed 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 leveled against them in the show cause notices"*.
- 14 Accordingly, KL Chadha by neither filing reply to show cause notice issued to him nor availing the opportunity of personal hearing in the adjudication proceedings, is presumed to have admitted charges leveled against him in the show cause notice. Accordingly, I find KL Chadha has contravened the provisions of Law and liable for penalty.

Has KMF violated PIT Regulations, 1992

- 15 I find merit in the submission of the KMF, as far as the disclosure requirements to be made in respect of KL Chadha, that KMF could not make any disclosure unless it receive said disclosure from KL Chadha. Therefore, I conclude that violation of Regulation 13(6) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 by KMF as far as KL Chadha is concerned is not established and KMF is not guilty to this extent.
- 16 As regards the violation of the provisions of Regulation 13(6) of PIT Regulations, 1992 in respect of Ms. Manisha Chadha is concerned, from the reply of KMF and BSE, it is clear that KMF has not made disclosure under Regulation 13(6) in Form A of PIT Regulations, 1992. Hence, KMF has failed to make disclosure under Regulation 13(6) in Form A of PIT Regulations, 1992 thereby violated the provisions of Law and liable for penalty.
- 17 However, I note that the purpose of these disclosures are to make investing public aware of change in shareholding of promoters to enable them to take an informed decision. In the instant case, KMF even though had not made disclosure under Regulation 13(6) in Form A, however had made disclosure under Regulation 13(6) in Form D within the stipulated time to BSE thereby the said change in shareholding is disseminated to the investing public at large at the correct time. I would like to rely on Hon'ble SAT ruling in **Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI**, wherein the Hon'ble SAT has observed 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."* Accordingly, since the non-disclosure of KMF is of technical nature, I am not finding it liable for any penalty for the same. Further I would like also to rely on Hon'ble SAT's ruling in the matter of **Samrat Holdings Ltd vs. SEBI** wherein *the Tribunal held that imposition of penalty in terms of Section 15 I of the Act: "...is a matter of discretion left to the Adjudicating Officer and that discretion has to be exercised judicially and on a consideration of all the relevant facts and circumstances. Further in a case it is felt that penalty is warranted the quantum has to be decided taking into consideration the factors stated in section 15 J. It is not that the penalty is attracted per se the violation. The Adjudicating Officer has to satisfy that the violation deserved punishment..*

ISSUE II. Does the violation, if any, on the part of KL Chadha & KMF attract monetary penalty under Section 15 A(b) of the Act?

18 Even though KMF is liable for penalty under Section 15 A(b) of the Act for its violation of regulations 13(6) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015, taking into account the availability of relevant information to the investing public in one form or other by virtue of the disclosure made by Manisha Chadha and KMF itself, **I exonerate KMF from the current proceedings without levying any penalty and dispose off the SCN issued against KMF in this regard.** However, KL Chadha having been violated the provisions of Regulation 13(4A) of PIT Regulations, 1992, thus, liable for monetary penalty as prescribed under Section 15A(b) of the Act.

19 Section 15A(b) of the Act (as existed during the period of violation) reads as under:

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) to furnish any document, return or report

(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 there for 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 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 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.

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.

21 It is observed from the records that any gain or unfair advantage accrued to KL Chadha as a result of non-disclosure has not been quantified. Further, there is no material is made available on record to assess the disproportionate gain or unfair advantage, amount of loss caused to an investor or group of investors as a result of non-disclosure and also to show KL Chadha as a repetitive offender.

ORDER

22 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 of the Act and Rule 5 of Rules, I hereby impose the following a monetary penalties which in my view are commensurate with the default committed by the entities:

Entity	Provisions of law violated	Penalty levied under Section	Quantum of penalty in Rs.
KMF Builders & Developers Ltd	Regulation 13(6) of PIT Regulations, 1992	Section 15 A(b) of SEBI Act	- Nil - Adjudication proceedings dropped and SCN issued is disposed off.
Kasturi Lal Chadha	Regulation 13(4A) read with 13(5) of PIT Regulations, 1992	Section 15 A(b) of SEBI Act	Rs 2,00,000/- (Rupees two lakh only)

23 The amount of penalty shall be paid within 45 days of receipt of this order either by way of

- (i) demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai

(or)

- (ii) by e-payment in the account of
"SEBI - Penalties Remittable to Government of India ",
A/c No. 31465271959,
State Bank of India, Bandra Kurla Complex Branch,
RTGS Code SBIN0004380

24 KL Chadha shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department 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 should be forwarded to "The Division Chief (Enforcement Department - DRA- I), Securities and Exchange Board of India, SEBI Bhavan, Plot no C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400052 and also to e-mail ID - tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (inRs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually	Bank name and Account number from which payment is remitted	UTR No

25 In terms of Rule 6 of the Rules, copies of this order are sent to KMF, KL Chadha and also to Securities and Exchange Board of India.

Date: September 15, 2017

SAHIL MALIK

Place: Mumbai

ADJUDICATING OFFICER