

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - SD/AO/148/2009]

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 SECURITIES CONTRACT (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACT (REGULATION) (PROCEDURE FOR HOLDING ENQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

Against

M/s. Krishna Engineering Works Ltd.

[PAN : Not Available]

In the matter of

M/s. Krishna Engineering Works Ltd.

BRIEF FACTS OF THE CASE:

1. SEBI had conducted the investigation relating to buying, selling or dealing in the shares of the company Krishna Engineering Works Ltd. for the period November 8, 2004 to February 2, 2005. Pursuant to the findings of investigation it was found that M/s Krishna Engineering Works Ltd. (hereinafter referred to as "Noticee / KEWL") had not submitted the correct shareholding pattern for the quarter ended December 2004. It

was observed that promoters / Directors of KEWL / entities related to KEWL viz. Gurbachan Juneja, Mukesh Juneja, Amrik Singh, Krishna Wanti, Monica Juneja, Charanjit Singh, Gouri Mahajan transferred 30,08,800 (Thirty Lakhs Eight Thousand & Eight Hundred) shares of KEWL i.e. (22.2% of equity capital) in off-market transactions on December 27, 2004 to the entities who had given contact telephone number same as that of the Noticee in the KYC Forms submitted to their Depository Participants. The off-market transactions which were entered were provided to Noticee as an Annexure to Show Cause Notice. Most of the said off-market transactions were entered by the Promoters/Directors of Noticee in the month of December 2004 and the said changes were not reflected in the shareholding pattern for the quarter ended December 31, 2004 submitted with the exchange and thus it is alleged that Noticee has violated Clause 35 of the Listing Agreement. Shri Gurbachan Juneja was the Chairman and Managing Director and Promoter of KEWL while Mr. Mukesh Juneja and Mr. Amrik Singh were the promoters of KEWL during the Investigation Period holding 694600 (5.13%), 575200 (4.24%) and 679200 (5.01%) respectively. It is also alleged that Noticee had not intimated the sale of shares by Gurbachan Juneja (6,94,600 shares – 5.13% and Krishna Wanti (6,79,200 shares – 5.01%) to the stock exchange on which its shares are listed which is required U/Reg. 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “PIT Regulation”). Hence by not disclosing the same to the stock exchange (NSE) it is alleged that Noticee has also violated Regulation 13(6) of PIT Regulation.

2. SEBI has initiated adjudication proceedings under the Securities Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”) and Securities Contract Regulation Act (hereinafter referred to as

‘SCRA”) against Noticee on account of allegedly violating the provisions of Regulations 13(6) of PIT Regulation and Clause 35 of Listing Agreement.

APPOINTMENT OF ADJUDICATING OFFICER:

3. The undersigned was appointed as the Adjudicating Officer vide Order of SEBI dated October 02, 2008 under section 15-I of the SEBI Act r/w rule 3 of SEBI (Procedure for holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the Adjudicating Rules 1”) and under section 23-I of Securities Contract (Regulation) (Procedure for Holding Enquiry and Imposing Penalties by Adjudication Officer) Rules, 2005 (hereinafter referred to as “Adjudication Rules 2”) to inquire into and adjudge under Section 15A(b) of the SEBI Act and under section 23E of SCRA, the alleged violation of the provisions of Regulations 13(6) of PIT Regulation and Clause 35 of Listing Agreement.

NOTICE, REPLY & HEARING

4. A Show Cause Notice (hereinafter referred to as ‘SCN’) dated October 24, 2008 was issued to the Noticee in terms of the provisions of Rule 4 of Adjudication Rules 1 and 2 requiring the Noticee to show cause as to why an enquiry should not be held for the violations alleged to have been committed by the Noticee. It is noted that a letter had been received from the Noticee wherein Noticee had just acknowledged the receipt of said SCN and stated that the Noticee had already submitted information with SEBI from time to time and desired for a personal hearing.

5. Considering the facts of the case, it was decided to conduct an inquiry in the matter and the Noticee was granted an opportunity of personal hearing and accordingly was advised to attend the hearing on November 11, 2009 at SEBI's Northern Regional Office situated at New Delhi but Noticee failed to appear on the said date. In this regard, I have observed that SCN and the notice of Personal Hearing have been duly received and acknowledged by the Noticee and proof of the same are available on record. The SCN was sent through R.P.A.D and the notice of personal hearing was sent through courier. However, neither the Noticee nor his authorised representative appeared before me.
6. In this regard I have observed that Noticee has not refuted the charges levelled in SCN nor submitted any submissions against the alleged allegations mentioned in the said SCN. As the Noticee failed to submit any reply to the show cause notice despite being given sufficient time and failed to appear for personal hearings inspite of giving an opportunity, the inquiry is proceeded with taking into account the facts and material available on record.

CONSIDERATION OF ISSUES:-

7. The issues that arise for consideration in present case are:-
 - a) Whether the Noticee has violated the provisions of Regulation 13(6), of PIT Regulation?
 - b) Whether the Noticee had violated clause 35 of the Listing Agreement?

c) Do the violations, if any, on the part of the Noticee attract any monetary penalty u/s. 15A of SEBI Act and 23E of SCRA?

d) If so, what should be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992 and Section 23J of SCRA?

8. Before moving forward, it will be appropriate to refer to the relevant provision of PIT Regulation which inter alia reads as under:-

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

13 (1)

(2)

(3)

(4)

(5)

Disclosure by company to stock exchanges.

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

Clause 35. The company agrees to file the following details with the Exchange on a quarterly basis, within 15 days from the end of each quarter in the format specified.

(I)(a) Format of Statement showing Shareholding Pattern inter-alia as under:-

Name of the Company:

Scrip Code:

Quarter Ended

Cate gory Code	Catergory Shareholder of	Number of Shares holders	Number of shares held in demate rialised form	Total Shareholdi ng as a percentage of total number of shares	
				As a percentage of (A+B)	As a percenta ge of (A+B+C)
(A)	Shareholding of Promoter and Promoter Group (1) Indian a. Individuals/HUF b. Central Gov. c. Bodies Govt. d. FII e. Any Other Sub-Total (A)(1) (2)Foreign				

	a. Individuals(NRI / Foreign Individuals) b. Bodies Corporate c. Institutions d. Any other specify.				
	Sub Total (A)(2)				
	Total				

9. Thus it is clear from the aforesaid provision is that it is duty of every listed company to disclose to the Stock Exchanges on which its shares are listed, the information received under sub regulations (1), (2), (3) & (4) of Regulation 13. It is observed that Gurbachan Juneja sold 6,94,600 shares of Noticee which constituted 5.13 % and Krishna Wanti sold 6,79,200 shares of Noticee which constituted 5.01 %. Thus, it is evident that Gurbachan Juneja and Krishna Wanti held more than 5 % before sale of said shares. Regulation 13(3) requires any person who holds more than 5 % shares or voting rights in any listed company to disclose to the company the number of shares held by him. Such disclosure shall also be made if there has been any change in such holding from such last disclosure and such change exceeds 2 %. Sale of shares (in this case) by Gurbachan Juneja and Krishna Wanti is more than 2% and they are required to disclose to Noticee the number of shares held by them and the change in shareholding. After, they have informed the same to Noticee, the duty is now cast on the Noticee to disclose the same to Stock Exchange on which its shares are listed (NSE in present case) within five days of receipt of such information. It is alleged that Noticee had not disclosed such information to Stock Exchange on which its

shares are listed. National Stock Exchange (NSE) informed SEBI vide letter dated July 24, 2007 that it had not received any disclosure under SEBI PIT Regulation and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 from Noticee during Novemebr 01, 2004 to March 31, 2005. The Noticee had neither denied such allegations nor defended the allegations mentioned in the said SCN and considering the facts and circumstances of the case I find that Noticee had failed to disclose change in holdings of shares of Noticee by Gurbachan Juneja and Krishna Wanti to NSE and thus has violated Regulation 13(6) of PIT Regulation and therefore liable for penalty u/s 15 A (b) of SEBI Act.

10. As regards to second issue, I have observed that company has to file some details which include Shareholding Pattern with the Exchange (NSE) at the end of each quarter. I find from the records available that Shri Gurbachan Juneja, Chairman and Managing Director of Noticee had administered an oath before Investigation Authority, SEBI on Janauary 30, 2008 wherein he admitted that off market transactions done by promoters / directors were in last week of December and there was an error in compiling the information for the quarter ended December 31, 2004 and therefore, the said change was not reflected in quarter ended December 31, 2004 but was reflected in quarter ended March 31, 2005. It thus appears to me that Shri Gurbachan Juneja had neither disputed the fact of such change nor disputed that Noticee had failed to disclose such change for the quarter ended December 31, 2004. Moreover, it is also found from the records that promoters / directors of Noticee viz. Gurbachan Juneja, Mukesh Juneja, Amrik Singh, Krishna Wanti, Monica Juneja, Charangit Singh, Gouri Mahajan transferred 30,08,800 shares of Noticee in off market on December 27, 2004. These off market transactions constitute 22.2% of equity capital and the said change was

not reflected in the December 2004 quarter result. The shareholding pattern for December 2004 and September 30, 2004 was almost same. Considering the findings arrived at herein above and facts and circumstances of the case I find that Noticee had not disclosed the said change in shareholding pattern for the quarter ended December 31, 2004 though the said change had taken place in the last week of December i.e. on December 27, 2004. Thus, Noticee had violated Clause 35 of the Listing Agreement and therefore liable for penalty under section 23 E of SCRA.

11. It has been observed from the record that Noticee has just submitted a letter dated November 15, 2008 and the said letter has not denied or refuted the charges leveled against it. The Noticee through said letter though sought for personal hearing but not appeared before me when provided with such opportunity. In view of the above I find Noticee guilty of violating Regulation 13(6) of PIT Regulation and Clause 35 of Listing Agreement and therefore held Noticee liable for penalty.
12. I observed that the Noticee has failed to file any reply to the said SCN and has not refuted the charges. The Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Ltd. ...v/s... SEBI [2007] 76 SCL 51 (SAT - MUM.) inter-alia held – **“the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them”**. The order passed by Hon'ble SAT is relied upon in this case for guidance. Therefore, I presumed that the Noticee has admitted the charges alleged in the said SCN.

13. The Hon'ble Supreme Court of India in the matter of SEBI .. v/s...Shri Ram Mutual Fund (2006) 68SCL 216 (SC) held - ***“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow”***.
14. Thus, the aforesaid violations by the Noticee make it liable for penalty u/s. 15A (b) of SEBI Act, 1992 and 23 E of SCRA which read as follows:

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 ³[a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less];

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

23E. 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.

15. While determining the quantum of penalty u/s. 15A of SEBI Act and 23E of SCRA, it is important to consider the factors stipulated in S.15J of SEBI Act and 23J of SCRA, which inter-alia read as under:-

Factors to be taken into account by the adjudicating officer.

15J of SEBI Act and 23J of SCRA.

While adjudging quantum of penalty under section 15-I and 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.*

16. It is difficult in case of such nature, to quantify exactly the disproportionate gains on unfair advantage by an entity and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made by Noticee. However, default committed by the Noticee can not be said to be repetitive in nature.

ORDER

17. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me U/S 15-I(2) of the SEBI Act, 1992 and 23I-(2) of SCRA, I hereby impose a penalty of Rs.1,00,000/- (Rupees One Lakh Only) for violation of Regulation 13 (6) of PIT Regulation and Rs. 1,00,000 (Rupees One Lakh Only) for violation of Clause 35 of Listing Agreement on the Noticee viz. M/s.Krishna Engineereing Works Ltd. Thus, in all Noticee has to pay Rs.2,00,000/-

(Rupees Two Lakhs Only) by way of penalty. I am of the opinion that penalty is commensurate with the violations committed by the Noticee.

18. The above penalty amount shall be paid 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 Division Chief, IVD ID-1 Securities & Exchange Board of India, SEBI Bhavan, Plot no. C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.
19. In terms of the Rule 6 of the Adjudicating Rules, copy of this order is sent to the Noticee and also to Securities & Exchange Board of India.

Date: December 14, 2009

Place: Mumbai

SANDEEP DEORE

ADJUDICATING OFFICER