

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. ORDER/BD/BM/ 2019-20/ 6356**

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 & UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

Shri Sanjay Lai (PAN: AAEPL6967H)

In the matter of KSS Limited

BACKGROUND

1. Securities Appellate Tribunal (SAT) vide, order dated September 17, 2019, remitted the matter to the Adjudicating Officer (AO) to decide the matter afresh after providing the copy of Show Cause Notice (SCN) and giving an opportunity of hearing to Sanjay Lai (hereinafter referred to as Noticee).
2. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), on a complaint from one Mr. Arvind Ghosh alleging issue of misleading announcements by M/s KSS Limited (hereinafter referred to as KSS) and offloading of shares and price manipulation by the management of KSS, conducted investigation into the alleged irregularity in the trading in the shares of KSS and into the possible violation of the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the 'SEBI Act 1992') and various Rules and Regulations made there under during the period from October 01, 2007 to March 31, 2010 by the Noticee.

3. It was revealed that during the quarter ended September 2008, the promoter shareholding reduced to 39, 12,552 shares (5.83% of the share capital) from 43,50,504 shares (6.47% of the share capital) in quarter ended June 2008. Thereafter, it marginally reduced further in quarter ended December 2008. In quarter ended March 2009, the promoter shareholding reduced substantially to 5,21,150 shares (0.78% of share capital) indicating that the promoters exited the company. Thereafter, by quarter ended June 2009 it reduced to almost nil and subsequently to Nil in quarter ended September 2009.
4. It was further revealed that of KSS had to disclose the pledge of shares and the invocation of shares to the exchanges. However, they failed to do the same. Noticee, as the managing Director of KSS was responsible for non-disclosure of the shares pledged and the invocation of shares to the exchanges. However, he failed to do the same. Therefore, it was alleged that the Noticee violated Regulation 8A(4) of SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 2009 (hereinafter referred to as SAST (Amendment) Regulations, 2009).
5. Further, it was also observed that KSS failed to make disclosures regarding non implementation of corporate announcements to the stock exchanges. Noticee, as the Managing Director of KSS failed to disclose to the stock exchange regarding the non-implement of the corporate announcements. Therefore, it was alleged that the Noticee had also violated Clause 36(7) of the Listing Agreement r/w 21 of Securities Contracts(Regulation) Act, 1956 (hereinafter referred to as SCRA, 1956 and Clause 2.1 of Schedule II of Regulation 12(2) of SEBI (PIT) Regulations, 1992 (hereinafter referred to as PIT Regulations 1992).

SHOW CAUSE NOTICE, REPLY AND HEARING

6. In compliance with SAT directions, vide letter dated September 23, 2019 and e-mail dated October 17, 2019 Noticee was served the copy of SCN. Vide letter dated November 29, 2019 the Noticee submitted his reply to the SCN bearing ref. no. EAD/BJD/MAS/29293/2/2017 dated November 24, 2017.
7. In pursuance of the aforesaid order passed by SAT and in the interest of natural justice in terms of Rule 4 (3) of the Adjudication Rules, vide e-mail dated November 07, 2019, the Noticee was granted opportunity of personal hearing on December 16, 2019. Vide e-mail dated December 16, 2019 the Noticee requested to reschedule the date of personal hearing on December 19, 2019 which was acceded to. The Noticee attended the personal hearing on December 19, 2019 and reiterated the submission during the hearing as made earlier vide, letter dated November 29, 2019. Vide letter dated December 29, 2019 the Noticee has also submitted the additional reply to the SCN.
8. I am proceeding based on the material available on record and on the submissions made by Noticee.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

9. I have carefully perused the charges leveled against the Noticee in the SCN, written submissions made and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:
 - a. *Whether Noticee has violated Regulation 8A(4) of SAST (Amendment) Regulations, 2009, Clause 36(7) of the Listing Agreement r/w 21 of SCRA, 1956 & Clause 2.1 of Schedule II of Regulation 12(2) of PIT Regulations, 1992?*

- b. Does the violation, if any, attract the penalties on Noticee under Section 15A (b) and Section 15HB of SEBI Act 1992 and Section 23A (a) of SCRA, 1956 for the alleged violations committed by it?*
- c. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act 1992 and Section 23 J of SCRA, 1956?*

10. Before proceeding further, I would like to refer to the relevant provisions of law which read as under:

SAST (Amendment) Regulations, 2009

8A. (4) *The company shall disclose the information received under sub-regulations (1), (2) and (3) to all the stock exchanges, on which the shares of company are listed, within 7 working days of the receipt thereof, if, during any quarter ending March, June, September and December of any year,:-*

- (a) aggregate number of pledged shares of a promoter or every person forming part of promoter group taken together with shares already pledged during that quarter by such promoter or persons exceeds twenty five thousand; or*
- (b) aggregate of total pledged shares of the promoter or every person forming part of promoter group alongwith the shares already pledged during that quarter by such promoter or persons exceeds one per cent of total shareholding or voting rights of the company, whichever is lower.*

PIT Regulations 1992

12(2) *The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.*

Prompt disclosure of price sensitive information

2.1 *Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.*

SCRA 1956

21. Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

11. I find from the record that the Noticee acted as Managing Director of KSS during the period of investigation. The shares of KSS are listed on BSE and NSE. KSS is a media entertainment producer and distributor, producing media for cinema, television and software. KSS was established in 1995 as Garnet Paper Mills Ltd and renamed as K. Sera Sera Limited in 2011 and later changed to KSS Limited in December 2012.

Whether the Noticee was associated with the Company during IP

12. I note from the investigation report that the period of investigation from October 01, 2007 to March 31, 2010 was considered.

13. Vide, letter dated November 29, 2019 the Noticee submitted the reply to the SCN. The significant parts of the reply are reproduced as under:

- *I was working as the General Manager of K Sera Sera Ltd and was elevated as an Executive Director w.e.f 26th May, 2008 at a gross monthly salary of rupees one lakh per month.*
- *As the investigation period is from 1st October, 2007 to 31st March, 2010. I would like to bring to your kind notice, that:-*
 - i. *Mr Rajesh Pavitran was the Managing Director, of K Sera Sera Ltd w.e.f 7th March, 2007 to 28th February, 2008.*
 - ii. *Mr Amar Panghal was the whole time director of K Sera Sera Ltd w.e.f 7th March, 2007 to 24th April, 2008.*

- iii. *Mr Sanjay Gupta was the Managing Director of K Sera Sera Ltd w.e.f 28th February, 2008 to 30th June, 2008.*
- iv. *Myself, Mr Sanjay Lai was elevated to position of Managing Director from 29th July, 2009 and ousted on 28th February, 2012.*
- *As stated above, I was working as the General Manager of K Sera Sera Ltd and was elevated as an Executive Director on 26th May, 2008. Therefore, the allegations against me before the date of 26th May, 2008 does not pertain to me during the period from 1st October 2007 to 31st March, 2010.*
- *My scope was only related to managing the Company affairs, which include commercial matters and business development activities, and for legal and compliance norms, the company had a 'Compliance Officer' to comply with all the legal and compliance norms.*

14. I note from the MCA website and Annual report 2010 that the Board of Directors of KSS for the year April 01, 2007 to March 31, 2010 were as under:

Name of the director	Designation	Date of Resignation
Ashok Pamani	Promoter, Non-Executive	26.05.2008
Ramesh Pamani	Non Independent, Executive	22.01.2008
Amar Panghal	Non Independent, Executive	24.04.2008
Sanjay Gupta	Non Independent, Executive	30.06.2008
Rajesh Pavithran	Non Independent, Executive/Managing Director	28.02.2008
Ashok Gangwani	Non-Executive, Non Independent	17.03.2008
A P Naidu	Non-Executive, Independent	27.04.2007
Pramod Sawant	Non-Executive, Independent	31.10.2007
Rajiv Malhotra	Non-Executive, Independent	26.05.2008
Dinesh Bhanushali	Non-Executive, Independent	12.08.2008
Deepak Bhanushali	Non-Executive, Independent	17.03.2008
Venkatrao Satyam	Non-Executive, Independent	20.06.2008

Name of the director	Designation	Date of Resignation
Prakash Kumar Shah	Non-Executive, Independent	-
Raj Sital Motwani	Non-Executive, Independent	22.01.2008
Sanjay Lai	Managing Director	-
Anuraj Benara	Non-Executive Independent	09.01.2010
Husain Shattaf	Non-Executive Independent	-
Rajeev Benara	Additional Director	-

15. I note from the submission of the Noticee that he was associated with the company for the entire investigation period. I also note from the list of directors for the relevant period that the Noticee was appointed as the Managing Director on July 29, 2009 and thus he was occupying the most responsible position for the acts and omission by the company during the investigation period.

Non-disclosure of Pledged /Invoked shares

16. The details of change in promoter's shareholdings during the investigation period are as follows:

S. N	Promoter Name	Quarter ended Dec 07-Jun 2008		Quarter ended Sept 2008		Quarter ended Dec 2008		Quarter ended Mar 2009	
		No of Shares held	% to Share capital	No of Shares held	% to Share capital	No of Shares held	% to Share capital	No of Shares held	% to Share capital
1	Parag Sanghavi	4,89,975	0.73	4,89,975	0.73	4,89,975	0.73	-	-
2	Vajra Trading Co Pvt Ltd	4,25,700	0.63	4,25,700	0.63	4,25,700	0.63	-	-
3	Mantra Trading P Ltd	18,32,450	2.73	13,94,498	2.08	13,94,498	2.08	-	-
4	Ashok Pamani	9,28,779	1.39	9,28,779	1.38	9,18,779	1.37	3,47,550	0.52
5	Kamini Pamani	6,73,600	1	6,73,600	1	6,73,600	1	1,73,600	0.26
	Total	43,50,504	6.48	39,12,552	5.83	39,02,552	5.81	5,21,150	0.78

		Quarter ended Jun 09		Quarter ended Sept 09	
S. N	Promoter Name	No of Shares held	% to Share capital	No of Shares held	% to Share capital
1	Parag Sanghavi	-	-	--	-
2	Vajra Trading Co Pvt Ltd	-	-	-	-
3	Mantra Trading P Ltd	-	-	-	-
4	Ashok Pamani	-	-	-	-
5	Kamini Pamani	300	0.0004	-	-
	Total	300	0.0004		

17. I note that during the period October 01, 2007 to March 31, 2010, there was a change in the promoters holding from 6.48% for the quarter ended June 2008 to zero in September 2009.

18. It was observed that Parag Sanghavi, Vajra Trading Co Pvt Ltd and Mantra Trading Co. Pvt. Ltd., promoters of KSS pledged their holdings as detailed below:

S r. N o	Name of the promoter	Pledgee Details	Date of Pledge	No of Shares Pledged	Date of intimation to KSS by promoters	Date of intimation by KSS to Stock Exchange
1	Vajra Trading Co Pvt. Ltd	Global Trade Finance Pvt. Ltd	10.01.08	4,25,700	12.01.08	28.04.09
2	Parag Madhu Sanghavi	Global Trade Finance Pvt. Ltd	05.10.07	4,89,975	20.02.09	28.04.09
3	Mantra Trading Co Pvt. Ltd	Yes Bank Ltd.	05.07.07	10,00,000 \$	06.07.07	Not disclosed
		Global Trade Finance Pvt. Ltd	11.01.08	4,37,952*	12.01.08	28.04.09
				3,94,498*	12.01.08	28.04.09
	Total			27,48,125		
\$ Pledge by Mantra Trading Co. Pvt. Ltd. with Yes Bank Ltd. not disclosed by the Company to NSE *No. of shares pledged by Mantra Trading Co.Pvt. Ltd. with Global Trade Finance Pvt. Ltd. wrongly disclosed by the Company to NSE						

19. In terms of Regulation 8A(1) of SAST (Amendment) Regulations, 2009 as amended with effect from January 28, 2009:

A promoter or every person forming part of the promoter group of any company shall, within seven working days of commencement of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2009, disclose details of shares of that company pledged by him, if any, to that company.

Further, in terms of Regulation 8A(4), The company shall disclose the information received under sub regulations (1), (2) and (3) to all the stock exchanges, on which the shares of company are listed, within 7 working days of the receipt thereof, if, during any quarter ending March, June, September and December of any year.

20. I note from the disclosure made by the company to NSE on April 28, 2009 that the it had failed to disclose pledge of 10,00,000 shares by Mantra with Yes Bank Ltd. to NSE. BSE vide, email dated March 06, 2014, has also confirmed that the exchange had not received any disclosure under Regulation 8A(4) of SAST (Amendment) Regulations, 2009.

21. Further, the details regarding the invocation of pledged shares are as under:

Sr. No	Name of the promoter	Pledgee Details	Date of Pledge	No of Shares Pledged	Date of invocation	Date of intimation to KSS by promoters	Date of intimation by KSS to Stock Exchanges
1	Vajra Trading Co Pvt Ltd	Global Trade Finance Pvt. Ltd	10.01.08	4,25,700	09.03.09	16.03.09	Not submitted
2	Parag Madhu Sangha vi	Global Trade Finance Pvt Ltd	05.10.07	4,89,975	16.03.09	31.03.09	Not submitted
3	Mantra Trading Co Pvt Ltd	Yes Bank Ltd.	05.07.07	10,00,000	12.03.09	16.03.09	Not submitted
		Global Trade Finance Pvt Ltd	11.01.08	4,37,952	18.09.08	22.09.08	Not submitted
				3,94,498	16.03.09	23.03.09	Not submitted
	Total			27,48,125			

22. It was observed that KSS failed to file disclosures of invocation of shares of the promoters to NSE & BSE within 7 working days despite receiving the same from the promoters.
23. I note that the company had received the intimation of pledge of 10, 00,000 shares from the promoter Mantra Trading Co Pvt Ltd on July 06, 2007. Insertion of Regulation 8A(1)-(4) under SAST Amendment 2009 mandating disclosure of pledge, took place on January 28, 2009. I am of the view that the purpose of Amendment 2009 is to ensure that the details of share pledged disclose by the promoter are made available to investors as such information may provide vital information regarding the financial status of the affairs of the company to the investors.
24. In the instant case, since the intimation of disclosure of pledge made by the promoter was in the notice of the company, the company was under obligation to intimate the same to the exchange by virtue of the Amendment 2009. However, it failed to make disclosure to NSE and BSE as per the Regulation and till now there is no record of the disclosure of the pledge of shares and invocation of the share pledged with the stock exchange. I note from table in Para 18 above that the share pledged on January 11, 2008 was intimated by the promoter to the company on January 12, 2008 and in turn the company disclosed the same to the exchange on April 28, 2009 which was in compliance of the SAST Amendment 2009. However, intimation available with the company since July 06, 2007 could not be made by the company to the stock exchange till date. Therefore, I am of the view that the failure to disclose to the exchange for such long time can be viewed as continuing violation. The Noticee as the Managing Director had to take up the issue seriously and as representative for the company the Noticee had to take steps to disclose to the stock exchange which he failed on continuation basis. Therefore, the submission of the Noticee that he is not responsible just because he was appointed

on July 29, 2009 and subsequent to his appointment as Managing Director he was not informed about the non-disclosure to exchange cannot be accepted. I conclude that the failure to disclose to the exchange by the Noticee as Managing Director is a continuing offence and therefore, the allegation of violation of Regulation 8A(4) of SAST (Amendment) Regulations, 2009 against Noticee stand established.

Non-implementation of Corporate Announcements

25. It was observed that KSS made various announcements with respect to production of Hindi & Hollywood films, allotment of equity linked instruments to Yes Bank, convertible warrants on preferential basis to Hindustan Times, Dainik Bhaskar & Bennett Coleman & Co. Ltd., Optionally Convertible Redeemable Bonds to Global Trade Finance Ltd. Bidding for IPL teams, GDR issue, opening of multiplexes and developing of new technology for digital cinema.
26. I note that the following Corporate Announcements made by the Company were not implemented:

Date	Corporate announcement
September 08, 2009, September 29, 2009, October 12, 2009	Allotment of convertible warrants to Bennett Coleman & Co. Ltd.
September 01, 2009	Bidding for IPL teams
September 14, 2009	Production of Hollywood film "Americans in Danger"

27. Vide, letter dated December 29, 2019 the Noticee submitted as under:

“ For any disclosure of any non-implementation of a corporate announcement made by the Company, it is the Board of Directors who has to first decide that the Company will not implement any decision or announcement made earlier and till such decision has been made by the Board of Directors of the Company, the Company cannot make any disclosure of non-implementation of corporate announcement. In the present case it is

not alleged that the Board had decided not to implement any corporate announcement and not disclosed it to the stock exchanges.

That the announcement regarding allotment of convertible warrants to Bennett Coleman & Co. Ltd. was first made on 08th September, 2009 at 02:08:31 pm and the opening price for that day was Rs. 15.50 & the closing price was Rs. 15.88 and the closing price for the next day i.e. 09th September, 2009 was Rs. 16.10. No. of shares traded on 08th September, 2009 is 7,41,839 and on 09th September, 2009 is 3,63,897. There was no major increase in price of the shares of the Company based on such announcement and importantly on some occasions the trading volume had in fact decreased post such announcements.

Till 13th November, 2009 there was certainty that KSS will issue the Optionally Convertible Redeemable Bonds on Preferential Basis, however it is only some time thereafter that the issue did not materialize and it is submitted that both prior and post 29th December, 2009 there was admittedly a Compliance Officer. The exact details as to when the deal did not materialize is not available with me as the transactions relate to the year 2009-10 and I am not part of the Company since 28th February, 2012. If at all there was a requirement of disclosure of non-implementation in this regard, it was post December 2009 and that time there was a Compliance Officer of the Company.

Bidding for IPL teams

1st September, 2009 at 09:22:49 a.m., announcement regarding the same was made on the exchange. The price opened at Rs. 15 and closed at Rs. 15.13 on 01st September, 2009 and on 02nd September, 2009 it closed on Rs. 15.12. The trading Volume on 31st August, 2009 was 2,46,200, on 01st September, 2009 was 2,01,206 and on 02nd September, 2009 was 3,45,291.

There was no price change in the price of the shares of KSS based on this announcement and in fact the trading volume decreased on the day the announcement was made.

It is only post December 2009(when the tenders came out), the bid price for the new IPL teams was declared by the BCCI and only after such news came out KSS decided not to take part in bidding for new IPL team. The bidding had taken place only on 21st March, 2010. There was a Compliance Officer appointed by the Company during the said period and therefore I cannot be held liable for the non-disclosure of non-implementation of corporate announcement for bidding of IPL teams."

28. I note that the Company had disclosed to the stock exchanges about proposal for allotment of convertible warrants to Bennett Coleman & Co. Ltd., bidding for IPL teams and production of Hollywood film. These announcements are positive in nature and therefore, have potential to influence investors in their investment decision. Stock exchanges are the platforms for investors to gain access to all information relating to company in the form of corporate announcements. Listing agreement and LODR Regulations provides for prompt and accurate disclosures, on continuous basis, to be made to stock exchanges as it would aid investors to take informed decisions regarding dealing with shares of company. Therefore, both negative and positive announcements will not only have direct impact on the share price of company but also influences the decision of investors. Similarly, non- implementation of positive or price sensitive events will also have similar impact and influence. In the instant case, I note that KSS announced three major positive proposals in short span of 15 days i.e. allotment of convertible warrants to Bennett Coleman & Co. Ltd., bidding for IPL teams and production of Hollywood film. These announcements by its very nature would have positive impact on price and also encourage investors to invest in shares of company as they are indicative of growth of company and likely positive impact on their financials.

29. As required under Clause 36 of Listing Agreement and in terms Clause 2.1 of Code of Corporate Disclosure Practices for prevention of Insider Trading as

contained in Schedule II of PIT Regulations, 1992, price sensitive information shall be given by listed companies to Stock Exchanges and disseminated on a continuous and immediate basis. In terms of Code of Corporate Disclosure Practices for prevention of Insider Trading as contained in Schedule II of PIT Regulations, 1992, the Listed companies shall designate a senior official (such as compliance officer) to oversee corporate disclosure the company must comply with continuous disclosure requirements, overseeing and coordinating disclosure of price sensitive information to stock exchanges.

30. I am of the view that the Managing Director is the key managerial personnel who manages, controls and supervises of the affairs of the company. A company is a legal entity which acts through the directors. I note from the annual report for the year 2009-10 page No. 9 that the Noticee was authorized to sign on behalf of the Board of Directors which demonstrates that the Noticee was made the representative of the Board of Directors and he played key role for executing the decisions including that of corporate announcement and implementation of the corporate announcement.

31. I note that the Noticee has contended that there is no effect on the price of the scrip due to failure to disclose non implementation of the public announcement. I am of the view that public announcement and failure to disclose non implementation have major role on the price of the scrip. Had the failure of implementation of the public announcement brought to the notice of the public, there could have been a selling pressure from those investors who would have bought shares. Therefore, I don't find merit in the submission of the Noticee that there is no impact on price and volume due to failure to disclose the non-implementation of the public announcement.

32. Further, the Noticee had to maintain alternative arrangement if a compliance officer goes on long leave like maternity leave. I note that Noticee, being executive head of company, instead of taking responsibility of failure to oversee compliances is conveniently taking a ground that he is not responsible clearly demonstrates the casual approach towards regulatory / compliance requirement stated by law. Noticee by failing to manage the compliances in professional manner on several counts, Noticee has not only demonstrated its casual approach towards regulatory requirements but in the process denied the right of investors to know about the material information about the company and put them at a serious risk of non-disclosure of material price sensitive information.

33. In **Raymond Synthetics Ltd. And Ors vs Union Of India And Ors** on 4 February, 1992, AIR 847, 1992 SCR (1) 481 Hon'ble Supreme Court has held that *A 'director of a company who is an officer in default' appearing in sub-section (2A) must be understood with reference to the definition of 'an officer who is in default' contained in section 2(31) read with section 5. This definition includes the **managing director** or the whole time director of a company.*

34. I note that Noticee has contended that it is the Board of Directors which decides for the public announcement and disclosure on failure of the implementation of the public announcement. I am of the view that once the Noticee was aware of the non-implementation of the public announcement he was under statutory obligation to take up to the Board of Directors. I find that the Noticee has not taken any step in this respect and being Managing Director became instrumental in violation of the provision of law thereby held responsible for act of the company. Therefore, Noticee cannot conveniently escape from his responsibility by merely shifting it to the Board of Directors especially when he is also member of the Board.

35. In the case of **K.K. Ahuja vs. V.K. Vohra, (2009) 10 SCC 48**, Hon'ble Supreme Court has held that:

"It is evident that a person who can be made vicariously liable... is a person who is responsible to the company for the conduct of the business of the company and in addition is also in charge of the business of the company."

36. As per Clause 36 of Listing Agreement Apart from complying with all specific requirements, the company will keep the Exchange informed of events in order to enable the shareholders and the public to apprise the position of the company and to avoid the establishment of a false market in its securities... The company will also immediately inform the Exchange of all the events which will have bearing on the performance/operations of the company as well as price sensitive information.

37. Section 21 of SCRA states, "Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange."

38. Noticee, as the Managing Director of the company is the person responsible under Section 21 of SCRA for compliance with the norms for listing of securities on the stock exchange. In the instant case, the failure of Noticee to disclose on non-implementation of the corporate announcement has adversely affected the trust and confidence of investors and also denied them to take informed decision.

39. Therefore, the alleged violations of Clause 36(7) of the Listing Agreement r/w 21 of SCRA, 1956 and Clause 2.1 of Schedule II of Regulation 12(2) of PIT Regulations 1992 against the Noticee stand established.

40. The violation of Regulation 8A(4) of SAST (Amendment) Regulations, 2009, Clause 36(7) of the Listing Agreement r/w Section 21 of SCRA, 1956 & Clause 2.1 of Schedule II of Regulation 12(2) of PIT Regulations, 1992 as established above make the Noticee liable for monetary penalties as prescribed under Section 15A(b) and Section 15HB of SEBI Act 1992 and Section 23A (a) of SCRA, 1956.

41. Section 15A(b), Section 15 HB of SEBI Act 1992 and Section 23A(a) of SCRA 1956 (as existed during the period of violation) reads as under:

15A of SEBI Act 1992. *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.

15HB of SEBI Act 1992.

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

23A SCRA

Any person, who is required under this Act or any rules made thereunder, –

(a) to furnish any information, document, books, returns or report to a recognized stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognized

stock exchange, 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 for each such failure.

42. Here, it is important to refer to the observation of the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** wherein it was held that:

"In our considered opinion, 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..."

43. While determining the quantum of penalty under Section 15A(b) and Section 15HB of SEBI Act 1992 and Section 23A(a) of SCRA 1956, it is important to consider the factors stipulated in Section 15J of SEBI Act 1992 and Section 23 J of SCRA which read as under:-

Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15J of SEBI Act and Section 23J of SCRA, 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.*

44. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticee or the amount of

loss caused to an investor or group of investors as a result of the default. I note that, in **Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI**, 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."*

45. I take note that allegations against the Noticee are serious in nature. However, considering the submission of the Noticee in his additional reply dated December 29, 2019 that the SCN has been issued with delay, the alleged transactions had taken place around decade ago and the concerned person/s acquainted with the facts are no more associated with KSS, I am inclined, in the interest of justice and fairness, to accept the submission that delay in proceedings may have affected the Noticee's defense in some way.

ORDER

46. 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 Section 23-I of SCRA and Rule 5 of Rules, I hereby impose a monetary penalty on the Noticee as under:

Sr No.	Noticees	Regulation Violated	Actions Recommended	Penalties
1	Sanjay Lai	Regulations 8A(4) SAST (Amendment) Reg. 2009	Sections 15A(b) of SEBI Act 1992	Rs. 1,00,000/- (Rupees One Lakh Only)
		Clause 36(7) of Listing Agreement r/w Section 21 of SCRA 1956 & Clause 2.1 of Schedule II of Reg 12(2) of PIT Reg. 1992	Sections 15HB of SEBI Act 1992, Section 23A(a) of SCRA 1956	Rs. 2,00,000/- (Rupees Two Lakh Only)
	Total			Rs. 3,00,000/- (Rupees Three Lakh Only)

47. I am of the view that the said penalty would be commensurate with the violations committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors and markets.

48. 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 online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

49. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-I, SEBI, in the format as given in table below:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

50. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

51. In terms of Rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: December 31, 2019

Place: Mumbai

B J DILIP

ADJUDICATING OFFICER