

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER/SS/AS/2019-20/3238-3242]

**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. Kedia Consultants Pvt. Ltd. (PAN: AACCK1028P)
2. Mr. Raj Kumar Kedia (PAN: AAOPK7634A)
3. Esha Securities Ltd. (PAN: AAACE2862P)
4. Mr. Raj Kumar Kedia HUF (PAN: AAKHR2602D)
5. Ms. Esha Kedia (PAN: ASEPK4977G)

In the matter of Action Financial Services (India) Limited

1. Action Financial Services (India) Limited (hereinafter referred to as “the Company”) is a company having its shares listed on the Bombay Stock Exchange Limited (hereinafter referred to as “BSE”). In the course of investigation conducted by Securities and Exchange Board of India (“SEBI”) in the scrip of the company during March 01, 2009 to July 22, 2015 (hereinafter referred as “investigation period”) following was observed:

- a. On August 28, 2012, Kedia Consultants Pvt. Ltd. (“Noticee No. 1”), Mr. Raj Kumar Kedia (“Noticee No. 2”), Esha Securities Ltd. (“Noticee No. 3”), Mr. Raj Kumar Kedia HUF (“Noticee No. 4”) and Ms. Esha Kedia (“Noticee No. 5”) had acquired the shares of the Company and become promoter in the Company. The details of their shareholding in the Company for quarter ending September, 2012 was noted as follows:

Change in shareholding for quarter ending on September 2012:

Name of Promoter	Q.E. Jun 2012		Q.E Sept 2012		Change	
	No. of shares	% share holding	No. of shares	% share holding	No. of shares	% share holding
Kedia Consultants Pvt Ltd	0	0.00	4,99,667	4.97	4,99,667	4.97
Shri Raj Kumar Kedia	0	0.00	1,90,696	1.90	1,90,696	1.90
Esha Securities Ltd	0	0.00	91,316	0.91	91,316	0.91
Ms Esha Kedia	0	0.00	54,224	0.54	54,224	0.54
Raj Kumar Kedia HUF	0	0.00	53,175	0.53	53,175	0.53

Source: www.bseindia.com;

- b. Accordingly, the Noticee No. 1-5 were under the obligation to make disclosure to the Company within two working days of becoming promoter, as prescribed under the Regulation 13(2A) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations').
- c. On receipt of the information from Noticee No. 1-5 under Regulation 13(2A) of the PIT Regulations, Shri Bakul Ramniklal Parekh, Joint Managing Director of the Company, vide letters dated January 22, 2013, submitted the disclosures in "Form B" to the Company.
2. In view of above, SEBI noted that Noticee No. 1 – 5 made delayed disclosures to the Company under Regulations 13(2A) of the PIT Regulations on becoming promoter of the Company on August 28, 2012.
3. The competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the provision of Regulation 13(2A) of the PIT Regulations by Noticee No. 1-5, *namely*; Kedia Consultants Pvt. Ltd., Mr. Raj Kumar Kedia, Esha Securities Ltd., Mr. Raj Kumar Kedia HUF and Ms. Esha Kedia (hereinafter together referred as "the Noticees"). Vide a *communication - order* dated February 15, 2019, undersigned had been advised to inquire and adjudge under Rule 5 of the SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (Adjudication Rules) and section 15A (b) of the SEBI Act, the alleged violations of Regulation 13(2A) of the PIT Regulations by the Noticees.
4. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act, the notice to show cause no. EAD/SS/AKS/6815/1-5/2019 dated March 14, 2019 ('the SCN') was issued to the Noticees, calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under section 15A (b) of the SEBI Act for the aforesaid alleged violations.
5. The SCN was duly served upon the Noticees, wherein they were asked to submit the reply within 14 days of receipt of the notice. However, no reply was received from them. In the interest of natural justice and in terms of Rule 4 (3) of the Adjudicating Rules, vide notice dated April 04, 2019, the Noticees were allowed additional time to file their reply to SCN and also to avail the opportunity of personal hearing on April 16, 2019. Vide letter dated April 11, 2019, the Noticees submitted that they were busy in finalizing their annual accounts for March -closing and requested for 4 weeks' additional time to file their reply to SCN. Considering the request of the Noticees further opportunity was provided to them on May 03, 2019 as the last opportunity. The Noticees availed the opportunity of hearing granted to them on May 03, 2019, wherein, they were represented by their Authorised Representative (AR); Mr. Balveer S. Chaudhary, Chartered Accountant, when he requested for granting one weeks' time to make written submissions in the matter and waived off further opportunity of personal hearing in the matter. The request was acceded to and the Noticees were granted one weeks' additional time to make written submissions in the matter. However, no reply has been received from the Noticees in the matter till date, despite granting multiple opportunities to them

to file their reply in the matter. Vide the SCN/notice of hearing, it was clearly indicated to the Noticees that in case of their failure to submit reply, the case would be proceeded with *ex-parte* on the basis of the material available on record. Considering these facts and circumstances, I am of the view that the Noticees are deliberately keeping away from these proceedings and are not willing to cooperate. I, therefore, conclude that the Noticees have nothing to submit and in terms of Rule 4(7) of the Adjudication Rules the matter can be proceeded *ex-parte* on the basis of material available on record.

6. In absence of any submissions/ reply from the Noticees, it is presumed that they have admitted the charge of provisions as alleged in the case. In this regard, the observations of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Classic Credit Ltd. vs. SEBI* (Appeal No. 68 of 2003 decided on December 08, 2006) are relevant to rely upon wherein it has that- "... 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". Further, the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs SEBI* (Appeal No. 68 of 2013 decided on February 11, 2014), has, *inter alia*, 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 levelled against them in the show cause notices..."
7. I have also carefully considered the allegations and charges levelled against the Noticee and relevant material relied upon in this case. Before dealing with merits of the case, it is deemed appropriate to refer to the provisions of Regulation 13(2A) of the PIT Regulations charged in this case which reads as follows:-

'Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure 13(2A) Any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group.'

8. As per the above Regulation 13(2A), the disclosure by a promoter has to be made to the listed company in prescribed Form B within 2 working days of becoming of the promoter of the said listed company. The Noticees in this case, admittedly, became the promoters of the Company on August 28, 2012 and in terms of said Regulation 13(2A) each of them were required to make prescribed disclosure in Form B to the Company by August 30, 2012. However, such disclosures in Form B were belatedly made to the Company on January 22, 2013. I, therefore, find that the Noticees had failed to make requisite disclosures to the Company within the time specified in Regulation 13(2A) of the PIT Regulations on becoming promoter in the Company and consequently the default attracts penalty provisions of section 15A (b) of the SEBI Act as it was in force as on the date of default i.e. August 31, 2012. Said section 15A(b) as it existed at that time, provided as under:-

Penalties and Adjudication

'Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.'

9. In this context it is to be noted that Section 15I of the SEBI Act providing for adjudication, does not direct the Adjudicating Officer to impose penalty for failure *per se* as per for the penalty provisions under section 15A. According to section 15I (2) if on inquiry the Adjudicating Officer is satisfied that the person has failed to comply with the provisions specified in the section, '*he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections*'. The expression '*may*' used in Section 15I(2) that empowers the Adjudicating Officer shows that it is not mandatory provision to mechanically impose penalties as per language of the provisions and the '*failure*' referred to in section 15A needs be considered in the light of judicial pronouncements explaining the situation. It is also settled position that the words "shall be liable to" used in the context of "penalty in any statute, do not convey an absolute imperative; they are merely directory and leave it to the discretion of the Authority to impose any penalty or not. Further, from the ratio of the Judgement of Hon'ble SAT in the matter of *M/s. Ushdev Trade Ltd. vs. SEBI (SAT Appeal No 106 of 2010- Order dated 14.9. 10)*, it is noted that the adjudicating officer is not bound to be always within the specified range while imposing the penalty on a delinquent and he must exercise his discretion in imposing any penalty having regard to the factors listed in section 15J which reads as follows:-

15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default."*

Explanation.—*For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section;*

10. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019 for exercising discretion under section 15I(2) read with section 15J, it is noted that the provisions of section 15J has to be properly understood, and not to be mechanically applied and other factors reasonable for the facts of the case are also relevant to take into account for adjudging the quantum of penalty.

11. It is commonly accepted after the amendment in section 15J of the SEBI Act, vide Part VIII of Chapter VI of the Finance Act, 2017 which was brought after Judgement of Hon'ble Supreme Court in the case of Roofit Industries, that while the adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having regard to the factors specified in section 15J. While determining the quantum of penalty, it is important to consider the factors stipulated in section 15J of the SEBI Act. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default cannot be computed. Admittedly, and as also noted from BSE website, the Company had, in its shareholding pattern for the quarters ending on September 30, 2012 filed with BSE, disclosed the shareholding of the Noticees in its promoter and promoters' group shareholding. Thus, the Company was aware of the requisite information as per Regulation 13(2A) before it made such disclosures to BSE. Thus, there was no delay beyond the time when the Company became aware of the requisite information before making the disclosures in its said shareholding pattern. This fact, in my view, is a mitigating factor while deciding the quantum of penalty to be imposed upon the Noticees in this case.
12. Considering all the facts and circumstances of the case including the aforesaid mitigating factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose following penalty upon the Noticees *viz.* Kedia Consultants Pvt. Ltd., Mr. Raj Kumar Kedia, Esha Securities Ltd., Mr. Raj Kumar Kedia HUF and Ms. Esha Kedia, under section 15A (b) of SEBI Act. In my view, the said penalty is commensurate with the violations committed by these Noticees in this case:

Noticee	Violations	Amount of Penalty
Kedia Consultants Pvt. Ltd. (Noticee No. 1)	Regulation 13(2A) of the PIT Regulations	₹1,00,000/- (Rupees Two Lakh Only)
Mr. Raj Kumar Kedia (Noticee No. 2)		₹1,00,000/- (Rupees One Lakh Only)
Esha Securities Ltd. Parekh (Noticee No. 3)		₹1,00,000/- (Rupees One Lakh Only)
Mr. Raj Kumar Kedia HUF (Noticee No. 4)		₹1,00,000/- (Rupees One Lakh Only)
Ms. Esha Kedia (Noticee No. 5)		₹1,00,000/- (Rupees One Lakh Only)

13. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380

Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

14. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "*The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C-4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051*" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

15. 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, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.
16. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: May 20, 2019
Place: Mumbai

Santosh Shukla
Adjudicating Officer