

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. ORDER/BD/BM/ 2019-20/ 5252

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:

M/s KSS Limited (PAN: AAACG5103D)

In the matter of KSS Limited

BACKGROUND

1. Securities Appellate Tribunal (SAT) vide, Order dated July 23, 2019 directed M/s KSS Limited (hereinafter referred to as KSS/Noticee) to appear before Adjudicating Officer (AO) on August 23, 2019 along with its reply to the Show Cause Notice (SCN) dated November 24, 2017, levied the cost of Rs. 50,000/- (Rs. Fifty Thousand Only) on KSS for delaying the Adjudicating Proceedings and also directed that the AO will proceed from there onwards and after providing an opportunity of hearing shall decide the matter within four months thereafter.
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 KSS and offloading of shares and price manipulation by the management of KSS, examined 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 KSS.

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 KSS failed to disclose the pledge of shares and the invocation of shares to the exchanges. Therefore, it was alleged that KSS had violated Regulation 8A(4) of SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 2009 (hereinafter referred to as SAST (Amendment) Regulations, 2009).
5. Further, KSS failed to make disclosures regarding non implementation of corporate announcements to the stock exchanges. Therefore, it was alleged that KSS 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, Noticee vide letter dated August 22, 2019 submitted its reply to the Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/BJD/MAS/29293/1/2017 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 letter dated August 28, 2019, the Noticee was granted opportunity of personal hearing on September 19, 2019 which the Noticee attended and reiterated the submission during the hearing as made earlier vide, letter dated August 22, 2019.
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 KSS 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 KSS 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 of 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 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 in December 2012.

12. Vide, letter dated August 22, 2019 the Noticee submitted the reply to the SCN.

The significant parts of the reply state that the company secretary of the company, Ms. Neelam Sawant was on Maternity Leave and the Noticee did not have assistance to deal with various and complex compliances which are required under the various applicable provisions of Companies Act, 1956 and SEBI Act, 1992 and various rules and regulations formulated under it. Further, immediately upon making the decisions to invest by buying an IPL Team Franchisee, the information of the said decisions was intimated to the public. However, before the implementation of the said decisions, the criteria relating of bidding got changed and the Noticee could not be prepared for the new criteria. Other significant submissions for failure in compliances as under:

- Since the company did not have that much surplus profits to enable them to execute their decision of buying an IPL Franchisee.
- Since the Noticee was not appropriately advised, it did not know that non-implementation of the corporate announcement was also to be intimated to the Exchange. Hence the same was not intimated to the Exchange.
- There is no substantial change in the price of the share of the Noticee. Further, there is no loss caused to investor due to non- implementation of said corporate announcement.

- Due to ongoing recession in the industry and change in dynamic of production, the Noticee was unable to implementation of corporate announcement.
- With respect to the non- implementation of corporate announcement of production of Hollywood film “Americans in Danger”, the designated personnel left the company, no information was available with them.
- We were left in a very bad state with the concerned person leaving is with no, information and also the loss of money, project and reputation.
- All these projects were also affected by the recession which had set in world over. The recession has severely affected the entertainment industry in general and also the Noticee wherein it had resulted in severe in sever cash crunch in the company. It is these financial conditions that had impacted the ongoing and proposed decisions of the Noticee and the financial prospects.
- The Noticee did not accrue any sort of benefit or gain by the non-disclosure under SEBI Rules and Regulations. This also establishes the fact that there was no intention on their part to deliberately avoid disclosure and dispose shares of the company.

Non-disclosure of Pledged /Invoked shares

13. 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
S. N	Promoter Name			Quarter ended Jun 09		Quarter ended Sept 09			
				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				

14. 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.

15. 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. N	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						

16. 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.

17. I note that the Company disclosed the pledge details of promoters to NSE by its letter dated April 28, 2009. However, I note that the Company has submitted wrong information to NSE on April 28, 2009 with respect to the pledge of shares by one of the promoters viz., Mantra Trading Co. Pvt. Ltd.(Mantra), despite receiving the correct information from Mantra. Vide its letter dated April 3, 2014, KSS has submitted that at the time of disclosure to NSE on April 28, 2009, it had inadvertently mentioned 13,94,498 shares of Mantra as pledged with Global Trade Finance Ltd., instead of 8,32,450 shares. Further, from the disclosure made

to NSE on April 28, 2009, I find that the Company also failed to disclose pledge of 10,00,000 shares by Mantra with Yes Bank Ltd. Further, there was delay of more than two months by Company in disseminating the pledge details of the promoters to NSE. I note that the Company did not disseminate the pledge details of the promoters to BSE. BSE vide, email dated March 6, 2014, has also confirmed that exchange had not received any disclosure under Regulation 8A(4) of SAST (Amendment) Regulations, 2009.

Invocation of pledged shares:

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 Sanghavi	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			

18. I find that KSS delayed disclosure of pledged shares of promoters to NSE, it made wrong disclosure of pledged shares of promoter - Mantra Trading Co. Pvt. Ltd. to NSE, it did not disseminate the details of pledge shares of the promoters to BSE and it 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.

19. Noticee has submitted that the officer responsible for compliance was not available to comply with the provisions of law, the Noticee was not aware of the

compliances and the situation was badly effected due to recession. Noticee has also submitted that it has not made any unlawful gain from the failure to disclose to the stock exchange and from the non-implementation of the corporate announcements.

20. Noticee as a corporate entity was supposed to be aware of the requirement of legal compliances. Lack of the knowledge of law cannot be considered as a valid defense in law. Further, the Noticee had to maintain alternative arrangement if a compliance officer goes on long leave for the situation like maternity leave. By failing to manage the compliances in professional manner on several counts Noticee has not only demonstrated it 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.

21. Noticee has delayed disclosure of pledged shares of promoters to NSE, made wrong disclosure of pledged shares of promoter-Mantra Trading Co. Pvt. Ltd. to NSE, did not disseminate the details of pledge of shares of the promoters to BSE and 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. The Noticee has admittedly submitted that the error in the disclosure to NSE was on the part of the Noticee. Noticee also submitted that they had, inadvertently, not disclosed to BSE.

22. Failure of Noticee to disclose the pledge and invocation of pledged shares in a time bound manner to the stock exchanges has adversely affected the trust and confidence of investors and also denied them to take informed decision.

23. In view of above, the allegations of violation of Regulation 8A(4) of SAST (Amendment) Regulations, 2009 against KSS stands established.

Non-implementation of Corporate Announcements

24. It was noted that KSS carried out 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.

25. It was noted 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"

26. Vide, letter dated September 2, 2010, KSS has admittedly submitted that “the board in their various meeting had considered the proposal for issue of convertible warrants to Bennett Coleman & Co. Ltd. On preferential basis as per their letter of intent received and issue was subject to necessary approvals. However, the deal didn’t materialize. Further the company had evinced its interest for a co-production with Gaurang Doshi Production for a Hollywood film “Americans in Danger”. Currently the film is under production for a release early next year. “

27. 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 negative or price sensitive events will also have similar impact and influence. In the instant case, I note that Noticee 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. From the submission of Noticee, I note that it had admittedly failed to disclose to the stock exchanges regarding non implementation of these announcements as they were not advised properly.

28. 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. In the present case, the Company has failed to disseminate the extant information to the Stock Exchanges and thereby knowingly and deliberately deprived the investors of their rights to have information promptly and on continuous basis about the company. 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 KSS stand established.

29. 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 Sections 15A (b) and Section 15HB of SEBI Act 1992 and Section 23A (a) of SCRA, 1956.

30. Sections 15A(b) and 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.

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 SC(R)A 1956

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.

31. 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..."

32. While determining the quantum of penalty under Sections 15A(b) and 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 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 15-I 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.*

33. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticees 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."*

34. I take note that allegations against the Noticee are serious in nature. However, considering the oral submission of the Noticee that alleged transactions took place around decade ago and also the submission of the Noticee that concerned person /s acquainted with the facts are no more associated with the Noticee, 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

35. 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	KSS Limited	Regulations 8A(4) SAST (Amendment) Reg. 2009	Sections 15A(b) of SEBI Act 1992	Rs. 2,00,000/- (Rupees Two Lakhs 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. 5,00,000/- (Rupees Five Lakhs Only)
	Total			Rs. 7,00,000/- (Rupees Seven Lakhs Only)

36. 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.

37. 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

38. 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

39. 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.

40. 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: October 30, 2019

Place: Mumbai

B J DILIP
ADJUDICATING OFFICER