

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. EAD-9/SM/ 17-19 /2019-20]**

**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:

<b>Mr. Keyur M Shah (PAN: AAHPS4084K)</b>	<b>Keyur M Shah (HUF) (PAN: AAAHK5034L)</b>	<b>Kavita K Shah (PAN: AAYPS3458E)</b>
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**In the matter of M/s. Kelvin Fincap Ltd (formerly known as Dahyabhai Sons Limited)**

**Facts of the Case:**

1. Securities and Exchange Board of India ("SEBI") pursuant to investigation into the trading activities of certain entities in the scrip of Kelvin Finacap Ltd (formerly known as Dahyabhai Sons Limited) (hereinafter referred to as "KFL/Company") for the period from November 30, 2011 to May 29, 2014 (hereinafter referred to as "Investigation period/IP") observed that during April 07, 2012 to January 15, 2013, erstwhile promoters of KFL, Mr. Keyur M Shah, Keyur M Shah (HUF) and Ms. Kavita K Shah (hereinafter referred to Noticee(s) No. 1, 2 and 3 respectively) had transferred their shares to certain entities which led to change in promoter's shareholding in KFL. The details of the transfer of shares is as follows:

<b>S. No.</b>	<b>Date Of Transaction</b>	<b>Transferor Name</b>	<b>Transferee Name</b>	<b>Quantity Transferred</b>
1	07/04/2012	Keyur M Shah HUF	Narendra R Shah HUF	50000
2	07/04/2012	Kavita K Shah	Narendra R Shah	50000
3	07/04/2012	Kavita K Shah	Geeta Narendra Shah	50000
4	07/04/2012	Kavita K Shah	Abhishek N Shah	30000
5	15/01/2013	Kavita K Shah	Abhishek N Shah	6000
6	07/04/2012	Keyur M Shah	Narendra R Shah	200000
7	07/04/2012	Keyur M Shah	Geeta Narendra Shah	50000
8	07/04/2012	Keyur M Shah	Mahesh R Shah	70000
9	07/04/2012	Keyur M Shah	Abhishek N Shah	40000
10	14/04/2012	Keyur M Shah	Abhishek N Shah	41050
11	14/04/2012	Keyur M Shah	Geeta Narendra Shah	50000

12	14/04/2012	Keyur M Shah	Narendra R Shah	80000
13	15/01/2013	Keyur M Shah	Abhishek N Shah	25750

2. Consequent to the transfer of shares, Noticees as a promoters of KFL were required to disclose to BSE and KFL within two working days under Regulation 13 (4A) read with Regulation 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter Referred to as "PIT, 1992"), which they failed to do so to BSE, however as per KFL submissions noticees had made required disclosures to KFL. Hence it was alleged that Noticee(s) No. 1, 2 and 3 failed to disclose the change in promoter shareholding to Bombay Stock Exchange (hereinafter referred to as "BSE/stock exchange") and thus violated Regulation 13(4A) read with 13(5) of PIT Regulations
3. In this order wherever PIT Regulations is mentioned it should be referred to as PIT Regulations read with Regulation 12 of PIT 2015.
4. All Noticee shall be collectively hereinafter referred to as Noticees.

#### **Appointment of Adjudicating Officer**

5. The undersigned has been appointed as Adjudicating Officer vide order dated September 26, 2017 under Section 19 of the SEBI Act read Section 15-I of SEBI Act" read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Rules") to inquire and adjudge under Section 15A(b) of SEBI Act on Noticees for the alleged violation.

#### **Show Cause Notice, Reply and Personal Hearing:**

6. Based on the findings by SEBI, Show Cause Notice dated February 21, 2018 (hereinafter referred to as 'SCN') was served on Noticees in terms of Rule 4 of AO Rules read with Section 15 (I) of SEBI Act, calling upon the Noticees to show cause as to why an inquiry should not be held against them and penalty should be not imposed under Section 15A (b) of SEBI Act, 1992 on Noticees for the alleged provisions of law. The SCN issued was duly received by the Noticees.

#### **7. Allegation in the SCN broadly are as follows:**

- 7.1. Noticees had transferred shares to certain entities which resulted in change in promoters' shareholding for which they were required to make disclosure to BSE under Regulation 13 (4A) read with Regulation 13(5) of PIT, 1992.
- 7.2. BSE informed vide e-mail dated June 05, 2017 that it has not received aforesaid disclosure from the Noticees.
- 7.3. The Noticee 1 vide his letter dated June 30, 2017 (on behalf of Kavita K Shah, Keyur M Shah (HUF) and himself) to SEBI- Investigation Department submitted that he does not have any submissions to make in the matter.
- 7.4. KFL vide its letter dated May 02, 2015 and May 30, 2015 to SEBI-Investigation Department confirmed that it had neither received any disclosures from the concerned promoter group entities nor filed any disclosures with the stock exchange. In this regard, SEBI-Investigation Department vide e-mails dated June 06, 2017, June 07, 2017 and June 08, 2017, KFL specifically

*advised to confirm about the receipt of the disclosures, if any, from Keyur M Shah, Kavita K Shah and Keyur M Shah (HUF) during April 01, 2012 to May 29, 2014. KFL, contrary to its earlier confirmation dated May 02, 2015 and May 30, 2015, vide letter dated June 19, 2017, submitted that it had received disclosures from Keyur M Shah, Kavita K Shah and Keyur M Shah (HUF) and also provided certified copies thereof.*

- 7.5. *In view of the above, it was alleged that the erstwhile promoters of KFL, Noticee(s) No. 1, 2 and 3 failed to disclose the change in promoter shareholding to BSE in violation of Regulation 13(4A) read with 13(5) of PIT, 1992.*

## **8. Reply pursuant to SCN:**

### **8.1. Noticees submitted their reply which are broadly as follows:**

- 8.1.1. *Noticees submitted that as erstwhile promoters they carried on the business of KFL from 1992-93 till 2011-12 held and continue to hold 817250 equity shares of Rs. 10.00 each of the said company.*
- 8.1.2. *Sometimes in 2011, one Mr. Narendra R Shah approached the Noticees with an offer to purchase the entire shareholding of the Noticees and take the control of the company by adhering with all the compliances under Companies Act, SEBI Rules and Regulations before the transfer of the promoters shareholding and taking control the said company.*
- 8.1.3. *The Noticees accepting the offer made, informed KFL about their retirement from the company and the same was accepted by the company and requisite Form 32 was file with the Registrar of Companies.*
- 8.1.4. *The new promoters and new directors took over the control of the company and the same was filed with the Registrar of companies.*
- 8.1.5. *The new promoters substantially increased the share capital of the company by issuing fresh equity shares to the new promoters and its associates and thereby taking control over the company. The holdings of the erstwhile promoters was reduced to minority shareholders.*
- 8.1.6. *Mr. Narendra R Shah did not comply with the Companies Act, SEBI Act, SEBI Rules and Regulations and therefore the erstwhile promoters did not sell/transfer the shares to the new promoters. **The Noticees holds the shares in physical form and ready to submit for verification the original share certificate.***
- 8.1.7. *Since the shares are held by the Noticees, there is no need to make any disclosure under the said Regulation as the Noticees have not sold/transferred any of their shares.*
- 8.1.8. *The Noticees have not submitted any disclosures to the KFL about the sale/transfer of shares as annexed in the SCN. The purported documents do not bear the signature of any of the Noticees. The signatures appearing on the purported disclosures have been forged and fabricated and are different from the signatures of the Noticees.*
- 8.1.9. *Another reply was filed by the Noticees submitting original bank verified specimen signature of the Noticees and Joint Notarised affidavit of Narendra R Shah, Abhishek N Shah, Geeta N Shah and Narendra R Shah(HUF).*

## **9. Personal Hearing:**

- 9.1. *In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Rules, Hearing Notice was issued to Noticees on July 19, 2018 granting an opportunity of personal hearing before the undersigned on August 06, 2018. Noticees sought for adjournment of personal hearing due to reason cited in their e-mail dated July 27, 2018 and requested for any date between August 07, 2018 to August 10, 2018. Another opportunity of personal hearing was granted on August 07, 2018. On August 07, 2018, Noticee did not appear on the said time and the hearing was adjourned to August 13, 2018. Vide e-mail dated August 09, 2018, Noticees again sought adjournment of personal hearing which was rescheduled to August 27, 2018.*

- 9.2. Noticee No. 1 and Authorized Representative (hereinafter referred to as "AR") appeared before the undersigned on behalf of Noticees on the said date. AR reiterated to the written submission made and Noticee claimed that they had not transferred the shares to any one and they continue to hold those shares. Noticees were advised to produce the original share certificates allotted to the Noticees. Another opportunity of personal hearing was granted on March 11, 2019 to produce the desired documents.

**Reply pursuant to Personal Hearing:**

10. Pursuant to the personal hearing, vide letter dated November 14, 2018, the Noticees submitted a copy of purportedly joint notarized affidavit submitted by Narendra R Shah (HUF), Narendra R Shah, Geeta Narendra Shah and Abhishek Narendra Shah and certified copy from Chartered Accountant, M/s S H Desai & Co's certifying family's shareholding in Dahyabhai Sons Ltd during the period from the financial year 2008-09 upto 2017-18

**ISSUES FOR CONSIDERATION AND FINDINGS:**

11. I have carefully perused the replies and submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are:

**Issue I: Whether the Regulation 13 (4A) read with Regulation 13(5) of the PIT 1992 was violated by Noticee(s) 1, 2 and 3;**

**Issue II Does the violation, if any, attract monetary penalty under Section 15A (b) of SEBI Act on Noticee(s) No. 1, 2 and 3;**

**Issue III If so, what should be the quantum of monetary penalty?**

Before proceeding further, I would like to refer to the relevant provisions of PIT Regulations,

**13. Continual Disclosure**

*(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

**13(5)** *The disclosure mentioned in sub-regulations (3) and (4) shall be made within two working days of :*

- (a) the receipts of intimation of allotment of shares, or*
- (b) the acquisition or sale of shares or voting rights, as the case may be.*

**Relevant provision of PIT Regulations, 2015**

**Repeal and Savings:**

12. (1) *The Securities and Exchange Board of India (Prohibition of Insider Trading)*

*Regulations, 1992 are hereby repealed.*

*(2) Notwithstanding such repeal,—*

*(a) the previous operation of the repealed regulations or anything duly done or suffered*

*thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and*

*(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

### **Findings:**

12. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:
13. I note that BSE vide its e-mail dated June 05, 2017 informed that it has not received any disclosures under PIT Regulation for the change in shareholding from the noticees. Though initially denied, KFL vide its letter dated June 19, 2017 informed that disclosures were made by the Noticees under Regulation 13(4A) read with Regulation 13(5) of PIT Regulation and had also submitted copy of the Form D for the same.
14. I find that the Noticees in their submission before me have refuted the allegation by stating that they have not transferred the shares to the aforesaid entities and the Form D submitted by the company is forged as they are still holding the original share certificates in physical form, which are verifiable and therefore the requirement of disclosure under Regulation 13 (4A) read with Regulation 13(5) of PIT Regulation does not arise. Despite repeated request to the Noticees, they did not produce the original share certificates as claimed available with them.
15. I further note, in one of their submissions, Noticees have mentioned that one of the new promoters Mr. Narnedra R Shah approached the Noticees to purchase the entire shareholding of the Noticees and consequently taken over total control of the company after complying with all the Rules and Regulations of the stock exchanges, SEBI and Companies Act. Later on as he was unable to comply, he requested the Noticees to hand over the control and management of the company to him and his group with an assurance of complying and purchasing all the shares of the Noticees in accordance with the applicable provisions of law. Accepting his offer the Noticees retired as the Director of the company which was accepted by the company on January 31, 2012 and which was filed by the company with the Registrar of Companies on or about February 20, 2012. Further, the Noticees have stated they were not aware of the trading in their shareholding in the said company and had no role to play in the alleged transfer of shares in favour of the transferee mentioned in the said notice.

16. I also note, in another submission, Noticees have submitted a joint affidavit from new promoters Mr. Narendra R Shah, Ms. Geeta N Shah and Mr. Abhishek N Shah wherein these individuals have admitted that they have breached SEBI's Rules and Regulations and without the consent and knowledge and authority, had transferred the shares of old promoters to the new promoters, his family members, group companies and business associates and they traded in the shares of the Noticees and they have taken the responsibility of the consequences and damages arising from such transfer of shares including claims, demands, penalties, actions, fines etc.

17. In this case I note there were contradictory statements made by the Noticees. On one hand they have claimed that they have never transferred shares to the new promoters and original share certificates are with them and on the other hand they have produced joint affidavit by Narendra R Shah, Ms. Geeta N Shah and Mr. Abhishek N Shah wherein these individuals are accepting that share were fraudulently transferred. And finally in their latest statement, they have claimed that they have lost the original share certificates in the year 2001 as their office building was collapsed.

17.1. During the personal hearing, the following was enquired from the Noticees:

17.1.1. If shares were fraudulently transferred by the new promoters, why didn't they resorted to legal recourse or filed any complaint before any authority?

*It was informed by the Noticees that they have not filed any complaint against the said fraudulent transfer of shares before any court/authority since Mr. Narendra Shah has handed over the original title documents of his property (residential property) in consideration of the shares of the Noticees.*

17.1.2. If original share certificates were with them, how those shares were transferred to the new promoters.

*It was informed that they never sold the shares and they are holding the shares which they shall produce it.*

17.1.3. If the original share certificates were lost, did they applied for fresh certificates?

*It was informed by Noticees that they never intended to sale those shares and hence not applied for the duplicate share certificates*

18. I note that the Noticees were advised to produce the original share certificate for verification, which they failed to do so. Noticees were once again given the opportunity of hearing to produce the original certificate on March 11, 2019, but the Noticees vide e-mail dated March 05, 2019, informed that they are unable to submit the original share certificate as these shares were lost in collapse of office building in April 2001. Further, they have stated that they never needed any duplicate share certificate as they never intended to trade or ever trade in their shares. They have even stated that Mr. Narendra Shah has pledged his property documents in lieu of consideration of the shares of KFL which he has fraudulently transferred to his and his family/group entities. On March 11,

2019 at the time of personal hearing, Noticees did not produce the desired documents to prove that they have not transferred the shares to the present promoters.

19. To support their claim, Noticees had produced a certificate of a Chartered accountant confirming their shareholding in the company. Here I note that when the Noticees has claimed that they have lost their share certificate in office building collapse during the year 2001 then without physically verifying the original share certificate, how Chartered Accountant has provided certificate. Hence I am of the opinion this certificate is made after thought

20. I also find that the Noticees did not raise any objection with KFL or with any other agencies when the quarterly shareholding pattern filed by KFL showed reduction in their shareholding from quarter ended June 2012 to March 2013.

21. In view of the above facts, I find that the joint affidavit of the new set promoters provided by the Noticees and informing that the original share certificate is lost in building collapse without providing evidence and also the certificate from Chartered Accountants is after thought to evade proceedings against the Noticees.

22. In view of the above, I note that sufficient opportunity was provided to the Noticees to produce the original share certificate to prove their contention that it has not transferred the shares to the present promoters but they have failed to do so.

23. I note that the investors take informed decision to invest in the particular company based on the information available in the public domain. I find from the BSE website that the promoter holding of the Noticees filed in the quarterly shareholding pattern had reduced from 7,43,800 to Nil from quarter ended June 2012 to March 2013 for which the Noticees had not made disclosures under Regulation 13 (4A) read with Regulation 13(5) of PIT Regulation to BSE as confirmed by BSE. Since Noticees have not brought any cogent evidence to substantiate their claim, on the contrary they have given contradictory statements, mislead the current proceedings which has consumed substantial time of Adjudicating Officer.

24. In view of the above, the allegation against Noticee(s) 1, 2 and 3 for violation of Regulation 13 (4A) read with Regulation 13 (5) of PIT Regulation stands established.

**Issue II Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act on Noticee(s) No. 1, 2 and 3?**

**Relevant provisions of the SEBI Act, 1992:**

**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 a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

25. The Judgement of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has also 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..."*.
26. Noticee(s) No. 1, 2 and 3 as promoters of KFL by transferring their shares has triggered the disclosure requirements under Regulation 13 4(A) read with Regulation 13(5) of PIT Regulation and are liable for penalty.

**Issue III: If so, what should be the quantum of monetary penalty?**

27. While determining the quantum of penalty under Section 15A(b), it is important to consider the factors stipulated in Section 15J of SEBI Act, which read as under:-

*15J - Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

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

28. With regard to the above factors, it may be noted that the investigation report has not quantified the profit/loss for the violations committed by the Noticees. 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. The Noticees, by its failure to make true and correct disclosures, have severely impaired the integrity of the disclosure system put in place by the regulator and has deprived the investors of the significant information at the relevant time. Hence actions of noticees warrant the imposition of penalty.
29. Noticees have made several contradictory statements without providing any cogent evidence to support and deliberately attempted to create confusion in the current proceedings and hence I have taken into account the conduct of the noticees as one of the factor while arriving at the penalty in the matter.

**ORDER**

30. In view of the above, after considering all the facts and circumstances of the case, the material available on record, the submission made by the Noticees, in exercise of the powers conferred upon me under Section 15-I of SEBI Act, 1992 on Noticee(s) 1, 2 and 3:



Name Of The Noticee	Violations Provisions	Penalty Provision under Section SEBI Act, 1992	Amount of Penalty (Rs.)
Mr. Keyur M Shah	Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulation 2015	Under Section 15A(b) of SEBI Act, 1992	Rs. 5,00,000/- (Rupees Five Lakh Only)
Keyur M Shah (HUF)			Rs. 5,00,000/- (Rupees Five Lakh Only)
Ms Kavita K Shah			Rs. 5,00,000/- (Rupees Five Lakh Only)

31. 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 favor 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:

**Account No. for remittance of penalties levied by Adjudication Officer**

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RT GS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

32. The Noticees shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manager (Enforcement Department - DRA- IV) of SEBI. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- [tad@sebi.gov.in](mailto:tad@sebi.gov.in):

Date	
Department of SEBI	
Name of Intermediary/other Entity	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount (in Rs.)	
Purpose of payment	Penalty

Bank Name and Account Number from which payment is remitted	
UTR No	

33. 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.

34. In terms of Rule 6 of the Rules, copy of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

**Date: May 30,2019**  
**Place: Mumbai**

**SAHIL MALIK**  
**ADJUDICATING OFFICER**