BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/KS/AA/AO/91/2017-18]

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

Anmol Insurance Consultants Pvt. Ltd. (PAN: AAECA7605E)

In the matter of Kisan Mouldings Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had examined the trading in the shares of Kisan Mouldings Limited (hereinafter referred to as '**KML**'). The shares of KML are listed in Bombay Stock Exchange Limited (hereinafter referred to as '**BSE**'). It was observed by SEBI that Anmol Insurance Consultants Pvt. Ltd. (hereinafter referred to as '**the Noticee**') was holding 4.08% of the share capital of KML as on the quarter ending December 2010, which increased to 5.50% as on the quarter ending March 2011. However, no disclosure was made by the Noticee under Regulation 7(1) read with Regulation 7(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the '**Takeover Regulations**') and Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the '**PIT Regulations'**) to KML and to BSE where the shares of KML were listed. In view of the same, SEBI initiated adjudicating proceedings against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

2. Shri D. Ravi Kumar was appointed as the Adjudicating Officer, vide communiqué dated June 13, 2013, under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) to inquire and adjudge under Section 15A(b) of the SEBI Act, the alleged violations committed by the Noticee. Pursuant to the transfer of Shri D. Ravi Kumar, Shri Suresh B. Menon was appointed as the Adjudicating Officer by the Competent Authority vide appointment order dated June 22, 2015. Thereafter, the Competent Authority vide communique dated December 14, 2017 has appointed the undersigned as Adjudicating Officer in the instant matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice (hereinafter referred to as '**SCN**') dated August 23, 2013 was issued to the Noticee under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and penalty, if any, be not imposed on it under the provisions of Section 15A(b) of the SEBI Act for the alleged violations of Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13(1) of the PIT Regulations committed by the Noticee.

4. The Noticee, vide its letter dated September 10, 2013, requested for additional time, i.e., by September 30, 2013 to submit its reply to the SCN. Thereafter, the Noticee vide its letter dated October 04, 2013 submitted its reply to the SCN. In the aforesaid letter, the Noticee *inter alia* submitted that:

"….

5. We submit and say that we were allotted 3,00,000 number of Optionally Fully convertible warrants (hereinafter referred to as 'warrants') on a preferential basis by the

shareholders of KML in its Annual General Meeting (AGM) held on 27th September 2010 by passing a special resolution. The warrants could be converted into shares, at any time, within a period of 18 months. The warrants entitled Anmol to 3,00,000 number of shares of KML post conversion of warrants. We exercised our option to convert the said warrants into shares on 28th January 2011 which resulted in increase in our shareholding from 4.08% of share capital to 5.50% of share capital.

6. We submit and reiterate that we were allotted warrants by shareholders of KML by passing a special resolution in AGM held on 27th September 2010. We submit and say that as per SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, the explanatory statement forwarded to shareholders u/s 173 of The Companies Act, 1956 inter alia includes shareholding pattern of KML before and after the preferential issue, the identity of the proposed allottees, the percentage of post preferential issue capital that may be held by them and change in control, if any. As we were already a shareholder of KML on the date of the proposed allotment, we also received the notice of the AGM held on 27th September 2010, a copy of which is enclosed at Annexure 1.

7. We submit that as is observed from Annexure 1, the notice of the AGM includes the shareholding pattern as per Clause 35 of Listing Agreement before and after the preferential issue, identity of the proposed allottees including Anmol (page 63 of the notice of AGM), percentage of the post preferential issue capital that may be held by Anmol etc. We submit and reiterate that this notice of AGM would have been sent to all the shareholders and would have been submitted by KML to the stock exchanges.

8. We submit and reiterate that the required information that Anmol was being allotted warrants, which were to be converted at a later date, within a period of 18 months into shares and the details of shareholding pattern of KML post preferential issue was in the public domain. We, therefore, submit and reiterate that we did not have any intention to conceal or hide our shareholding in KML from anyone. Further, we submit that we have

not, till date, sold the shares of KML and continue to hold 7,50,000 shares of KML and our name continues to appear as a shareholder in the shareholding pattern available at the website of BSE. A copy of the shareholding pattern available as on quarter ending June 2013 is enclosed at Annexure 2.

9. We submit that the main purpose of disclosure stipulated as per Takeover Regulations and PIT Regulations is that the small investor is immediately aware of any significant happening in a listed company so that he is able to take an informed decision. We submit and reiterate that, in our case, the information that Anmol would hold a certain percentage of share capital of KML was in the public domain even prior to we were allotted warrants. Hence, there is no question of non disclosure on part of Anmol.

10. We once again submit and reiterate that the above shareholding was not acquired as an active acquirer but as a result of conversion of warrants into equity shares and we submit that we were under the impression that such acquisition of shares do not attract requirement of disclosure as per law and hence we did not make any disclosures.

11. We submit and reiterate that we have not filed the disclosures under the respective regulations in respective format but there has been no non disclosure on our part. We further submit that due to not filing of relevant disclosures no gain or advantage has occurred to Anmol and no loss or harm has been caused to any investors. We submit and reiterate that not filing of relevant disclosures was due to the difference in understanding of the relevant regulations as interpreted by Anmol and as interpreted by SEBI since it occurred not as active action by us but as a result of conversion of warrants into equity shares.

12. We submit that the shares in question were acquired at the rate of Rs. 57/- amounting to Rs. 1.71 Crore, however, the current market price of the shares is around

Rs 20/ -, total value amounting to Rs 60 Lacs. We submit and say that at current market Anmol is incurring a loss of Rs. 1.11 Crore and we had not sold a single share till date.

13. We submit and reiterate that we did not have any intention to hide the information and further the information was already in public domain before we were allotted shares. Hence, we submit that we did not have any intention to hide nor did we hide any information from general investors and as detailed above, neither noticee had any unfair gain or advantage nor any loss or harm was caused to the investors.

14. Further, we submit that the provisions of Regulation 7(1) of Takeover Regulations and Regulation 13(1) of PIT Regulations are not substantially different, since violation of first automatically triggers violation of second and hence a lenient view may be taken as regards imposition of penalty and penalty may not be imposed. The Regulation 7 (1) of Takeover Regulations and Regulation 13 (1) of PIT Regulations are not stand alone regulations and one is corollary of other.

…."

5. In the interest of natural justice, an opportunity of hearing was provided to the Noticee on August 12, 2014 vide hearing notice dated August 04, 2014. However, the said hearing notice returned undelivered with remark "Consignee Shifted/Moved". Thereafter, the adjudication proceedings were transferred from Shri D. Ravi Kumar and subsequently, the undersigned was appointed as Adjudicating Officer in the matter. The Noticee was intimated about the change in Adjudicating Officer and granted an opportunity of personal hearing on January 10, 2018 vide hearing notice dated January 03, 2018. Further, the Noticee was also advised to submit additional submissions/ documents, if any, at least one day before the hearing. The said hearing notice dated January 03, 2018 was sent via hand delivery and also by digitally signed email to email address "anmol.inscon@gmail.com." The said email address was obtained from the details of the Noticee available on the Ministry of Corporate Affairs (MCA)

website. However, the said hearing notice could not be delivered to the Noticee via hand delivery. Hence, the said hearing notice was affixed at the last known address of the Noticee in terms of Rule 7(c) of the Adjudication Rules. On the scheduled date of hearing on January 10, 2018, the Noticee did not attend the hearing.

6. Thereafter, vide hearing notice dated January 12, 2018, the Noticee was granted a final opportunity of hearing on January 19, 2018. The said hearing notice dated January 12, 2018 was sent via hand delivery and also by digitally signed email. However, the said hearing notice could not be delivered to the Noticee via hand delivery. Hence, the said hearing notice was affixed at the last known address of the Noticee in terms of Rule 7(c) of the Adjudication Rules. On the scheduled date of hearing on January 19, 2018, the Noticee did not appear for hearing.

7. In view of the above, I am of the view that principles of natural justice have been complied with since sufficient opportunities have been provided to the Noticee to appear for hearing. The Noticee has submitted its reply to the SCN but has failed to appear for the hearings granted to it. Therefore, I am proceeding further in the matter on the basis of available documents and information on record.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have taken into consideration the facts and circumstances of the case and the material available on record and the issues that arise for consideration in the present case are :

   (a) Whether the Noticee has violated the provisions of Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13(1) of the PIT Regulations?

   (b) Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?

(c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

9. Before moving forward, it is pertinent to refer to the relevant provisions of the Takeover Regulations and the PIT Regulations, which read as under:

Takeover Regulations:

Acquisition of 5 per cent and more shares or voting rights of a company.

7. (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

…

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

PIT Regulations:

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

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

10. Before proceeding further, it would be appropriate to mention the relevant facts of the case leading to the present proceedings against the Noticee:

(a) SEBI examined the trading in the shares of KML and it was observed that the Noticee was holding 4.08% of the share capital of KML as on the quarter ending December 2010, which increased to 5.50% as on the quarter ending March 2011. Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13(1) of the PIT Regulations stipulate that disclosures are required to be made to the target company/ the stock exchanges, on acquisition of shares resulting in holding of 5% or more of the share capital of a company. However, no disclosure was made by the Noticee in terms of Regulation 7(1) read with Regulation 7(2) of Takeover Regulations and Regulation 13(1) of the PIT Regulations to KML and to BSE.

(b) The Noticee in its reply to SCN has *inter alia* stated that it was allotted optionally fully convertible warrants on a preferential basis by the shareholders of KML in its annual general meeting held on September 27, 2010. The warrants entitled the Noticee to 3,00,000 shares of KML post conversion of warrants. The Noticee exercised the option to convert the said warrants into shares on January 28, 2011 which resulted in increase in its shareholding in KML from 4.08% to 5.50%. The Noticee in its reply has admitted that it did not make any disclosures for the said increase in its shareholding in KML.

11. Upon perusal of the submissions and documents available on record, I find that it is not in dispute that the Noticee was allotted 3,00,000 equity shares of KML upon conversion of convertible warrants on January 28, 2011. It is also not in dispute that after the aforesaid allotment of shares, the shareholding of the Noticee in KML increased from 4.08% to 5.50% and that the disclosure was not made by the Noticee under Regulation 7(1) read with Regulation 7(2) of

Takeover Regulations and Regulation 13(1) of PIT Regulations. However, the Noticee, while admitting the same, has contended that all along the information regarding allotment of warrants (including quantum) to them, the conversion of warrants into equity shares, the details of their shareholding pursuant to conversion of warrants, etc. were already in public domain, through the disclosures made by KML in terms of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and the explanatory statement forwarded to the shareholders under Section 173 of the Companies Act, 1956.

12. In this regard, I note that under Regulation 7(1) of Takeover Regulations and Regulation 13(1) of the PIT Regulations, there is an independent and separate statutory obligation of making disclosure on the acquirer of the shares and the information being in public domain through various disclosures made by the target company does not absolve the acquirer from making the relevant disclosure under the afore-mentioned regulations. In this context, I would like to rely on observation of Hon'ble Securities Appellate Tribunal (SAT) in Ambaji Papers Pvt. Ltd. vs. The Adjudicating Officer, SEBI dated January 15, 2014, wherein similar contention of information being in the public domain was raised by the appellant. SAT observed *".... that a reading of Regulation 7 of the SAST Regulations, 1997 read with Regulation 35(2) of the SAST Regulations, 2011 clearly points out that not only the company, but an acquirer is also required to inform the stock exchanges at every stage of aggregate of the shareholding or voting rights in the company. The object underlying these regulations is, therefore, unequivocally to bring more transparency by dissemination of complete information to the public as well as shareholders at large not only by the concerned company but by the individual acquirer as well*."

13. In this context, I observe that Hon’ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation

and penalty is imposed for non-compliance with the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had observed that "*Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.*" In view of the same, the contention of the Noticee that the information related to increase in its shareholding in KML was available in public domain and as such it was not required to make disclosures is not acceptable.

14. The Noticee in its reply has also stated that due to non-filing of relevant disclosures no gain or advantage has occurred to the Noticee and no loss or harm has been caused to any investor. In this reference, I would like to refer to the observations of Hon'ble SAT in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014*)*, wherein it was held that *".. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures*."

15. In view of the above, I find that the violations of Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13(1) of the PIT Regulations is established against the Noticee. The Hon'ble Supreme Court of India in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} held that " *In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary*".

16. In view of the same, I am convinced that it is a fit case to impose monetary penalty on the Noticee under the provisions of Section 15A(b) of the SEBI Act, which reads as under:

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 such failure continues or one crore rupees, whichever is less:

…

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

Factors to be taken into account by the adjudicating officer.

Section 15J - 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.

18. The material available on record also has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the non-compliance committed by the Noticee.

ORDER

19. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 5,00,000 (Rupees Five Lakh only) on the Noticee viz. Anmol Insurance Consultants Private Limited under the provisions of Section 15A(b) of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

20. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by

e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

21. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – 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."

1. Case Name:	
2. Name of 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)	

22. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Anmol Insurance Consultants Private Limited and also to the Securities and Exchange Board of India.

Date: January 31, 2018 **K SARAVANAN**

Place: Mumbai **GENERAL MANAGER &**

ADJUDICATING OFFICER