

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 AND UNDER SECTION 23-I (1) AND (2) OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PEENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

1. Kemrock Industries and Exports Limited (PAN: AAACK8810B);
2. Mr. Kalpesh Mahendrabhai Patel (PAN: ADFPP0505K);
3. Mr. Navin R Patel (PAN: ASRPP3670L);
4. Mr. Mahendra R Patel (PAN: ABFPP4493E);
5. Mr. N K Jain (PAN: AAWPJ8716G)

In the matter of Kemrock Industries and Exports Limited

BACKGROUND

1. Pursuant to an investigations into the dealing in shares of Kemrock Industries and Exports Limited (hereinafter, referred to as “**Company / Kemrock**”), Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) inter-alia observed the following:
 - 1.1 Incorrect disclosure made by Kemrock to Stock Exchange: The company in its disclosures to Stock Exchange (i.e, BSE), disclosed the shareholding of Mr. Kalpesh Mahendrabhai Patel (hereinafter, referred to as “**KMP**”), one of its promoter as 16,29,031 shares (8.01% of share capital) as on December 31, 2012 whereas the actual holding was 12,60,046 shares (6.20% of share capital). On seeking the clarification, Kemrock vide e-mail dated March 26, 2015 submitted that holdings of KMP disclosed as on quarter ended December 2012 was a typographical mistake. In view of the above admission of incorrect disclosure, it was alleged that Kemrock failed to make the appropriate disclosure of shareholding to Stock Exchange in violation of Clause 35 of Listing Agreement (hereinafter, referred to as “**erstwhile listing agreement**”) read with Section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter, referred to as “**SCR Act**”).
 - 1.2 Inappropriate closure of trading window:
 - a) An announcement by the company with regard to Financial Results and Limited Review for quarter ended June 30, 2012 was published on Aug 14, 2012 at 21:06 hrs on BSE and on August 16, 2012 at 11:01 hrs on NSE. The periodical financial results of the company is a deemed Price Sensitive Information (hereinafter, referred to as “**PSI**”) as per Clause (i) under Explanation to

Regulation 2(ha) of SEBI (Prohibition of Insider Trading) Regulations 1992 (hereinafter, referred to as “**PIT Regulations, 1992**”).

- b) Based on the information provided by Kemrock in its letters dated January 20, 2014, November 21, 2014 and February 02, 2015, chronology of events relating to PSI was formed, based on which, it was observed that data from manufacturing sites was collected, compiled and auditors were intimated for initiation of Audit work within 10 days from the end of the quarter i.e., July 10, 2012. Hence, the PSI came into existence on July 10, 2012. The PSI was unpublished during July 10, 2012 to August 14, 2012 – 21:06 hours. Company closed the trading window from August 07, 2012 to August 15, 2012 with respect to the PSI. However, given the observation that PSI came into existence on July 10, 2012, trading window closure period should have been from July 10 – August 15, 2012 instead of August 07, 2012 to August 15, 2012.
- c) It has been alleged that Kemrock, its Non-Independent Directors viz, KMP, Navin R Patel, Mahendra R Patel and the compliance officer viz, NK Jain failed to conduct appropriate closure of trading window, and thereby, they allegedly violated the provisions of Regulations 12(1) and Regulation 12(3) read with Clause 3.2.1 of Part A of Schedule I of the PIT Regulations, 1992.

1.3 Non-implementation of Code of Conduct for prevention of insider trading adopted by Kemrock, in view of dealings of KMP and BKP

- a) As per investigations, during June – September 2012, KMP bought 13410 shares and sold 53896 shares at BSE, and he bought 14620 shares and sold 89108 shares at NSE, and above dealings of KMP involved (i) trading during the trading window closure period by the company i.e, August 7 – 15, 2012, (ii) trading during the UPSI period (as per investigation, i.e, July 10 – Aug 14, 2012), and (iv) dealing in significant quantities during Aug 15 – Sep 30, 2012 requiring pre-clearances from company. Hence, it is alleged that KMP, promoter and Managing Director of Kemrock, dealt in the shares of Kemrock at Stock Exchange without necessary pre-clearances from Kemrock.
- b) Binitaben Kalpesh Patel (hereinafter, referred to as “**BKP**”), wife of KMP, MD of Kemrock, also traded in shares of Kemrock during the UPSI period as per investigation i.e, July 10 – Aug 14, 2012. Kemrock, vide its e-mail dated March 17, 2015 confirmed that no pre-clearance was obtained by BKP or KMP. Hence, it is alleged that BKP traded in shares of Kemrock at Stock Exchange without pre-clearances from Kemrock.
- c) In this regard, to ascertain the implementation of the Code of Conduct adopted for the prevention of Insider trading by Kemrock, SEBI sought information from Kemrock as to whether Non-Independent directors Mr. Navin R Patel, Mr. Mahendra R Patel and Mr. N K Jain, the then Compliance officer, were aware of the trades of KMP and BKP for which no pre-

clearance was sought. However, Kemrock did not confirm that the other non-independent directors and compliance officer were not aware of the aforesaid transactions.

- d) In view of the above, it is alleged that Kemrock, Non-Independent Directors viz, KMP, Navin R Patel, Mahendra R Patel and Compliance Officer N K Jain failed to implement the Code of Conduct for prevention of Insider trading adopted by the Company which was in violation of Regulation 12(1) and 12(3) read with Clause 1.2 of Part A of Schedule I of the PIT Regulations, 1992.
2. Entities mentioned above, alleged to have violated the aforementioned provisions, are hereinafter, individually referred to as by their **respective name / acronym** as mentioned above. Further, hereinafter, jointly they are referred to as “**Noticees**”. In view of inter-alia the aforesaid alleged violations by Noticees, SEBI instituted present adjudication proceedings in respect of the Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

3. Given the above, SEBI, under section 19 of the SEBI Act 1992 (hereinafter, referred to as “**SEBI Act**”) read with section 15-I(1) and 15-I(2) of the SEBI Act and Rule 3 of SEBI (Procedure for holding inquiry and imposing penalties by adjudicating officer) rules, 1995 (hereinafter, referred to as “**SEBI Adjudication Rules, 1995**”), and under Section 23-I of the SCR Act and Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter, referred to as “**SCRA Adjudication Rules, 2005**”), appointed an Adjudicating Officer to inquire and adjudge into the alleged violations in respect of Noticees under respective provisions alleged to have violated by them as mentioned in point 1 above, and if satisfied that penalty have become liable for the violations as established, to impose such penalty as deem fit in terms of Rule 5 of the said SEBI Adjudication Rules, 1995 and Section 15HB of SEBI Act, and under Rule 5 of the SCRA Adjudication Rules, 2005 and Section 23A(a) of SCR Act.
4. Consequent upon change in Adjudicating Officers, the instant matter was referred to the present Adjudicating Officer vide order / communique dated May 18, 2017, to inquire into and adjudge under the provisions as mentioned above.

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING

5. Show Cause Notice No. dated August 24, 2017 (hereinafter referred to as “**SCN**”) was issued to the Noticees detailing the allegations against them, and to show cause as to why an inquiry should not be held and penalty not imposed against them under aforesaid penal provisions.

6. SCN was delivered to KMP and Mahendra R Patel. As regards to Navin R Patel, no delivery receipt or undelivered dispatch was received back from his address in the United States where SCN was sent viz, "401, Midwest Club Pkwy, Oak Brook, Illinois – 60523, United States of America". As per records, SCN could not be delivered at the address of Kemrock and N K Jain as per records.
7. Scanned copy of SCN was also sent vide e-mail dated 25/09/2017 to contact e-mail IDs of Noticees available on record with which communication was established by SEBI in past during the investigation or e-mail ID available on records viz, *gopalsbab@kemrock.com*, *investor@kemrock.com*, *tushar78664@gmail.com*.
8. Mahendra R Patel vide his reply vide e-mail and letter dated September 5, 2017, made following key submissions with request to remove his name from the present adjudication proceedings:

"Mahendra R Patel, obtained degree, B.E. (Chemical Engineering) from M. S. University, Vadodara during June, 1971.

Worked as Lecturer in Chemical Engineering Department (1971 to 1974); at D. D. Institute & Technology, Nadiad. Technical Work in Manufacturing, Technological Implementation, Health, Safety, Environmental Improvement, etc. from 1974 to 2007 at Indian Petrochemical Corporation/ Reliance Industries Limited, Vadodara.

Resigned as Vice-President (Operations) to support Carbon Fiber Project for National cause during December, 2007.

ONLY TECHNICAL EXPERIENCE IN IPCL/RIL (34 years). (Annexure 1)

Kemrock Industries and Exports Limited, Vadodara

Joined as Chief Executive Officer (Carbon Fiber Project) in December, 2007. Carbon Fiber Project is first project on commercial scale in INDIA to support National Defense & Aerospace Programme. Carbon Fiber project was set up as per wish of Respected Dr. A. P. J. Abdul Kalam Sir, Ex-President, GOI. Carbon Fiber project successfully commissioned technically achieving consistency in Productivity, Quality, and Certification for Aeronautical applications from CEMILAC, Bangalore under leadership of Mahendra R Patel as CEO (Carbon Fibre Plant).

*Due to three major fires and one fatal accident in Kemrock during the year 2009, Mahendra R Patel was additionally given responsibility as **Occupier** from 03.06.2010 for **factory act compliance (Boiler, Factory act related safety, emission of toxic gases etc.)**. Since **Occupier** has necessarily to be **Director**, inducted in the **Board** from **03.06.2010 to 02.06.2013**. Board resolution attached at Annexure 4.*

***Following major responsibilities from 03.06.2010 to 02.06.2013 (Annex 2 & 3):** Chief Executive Officer for Carbon Fiber Project, Occupier for factory Act Compliance and Health, Safety, Environmental Improvement & Control. Between December 2007 up to July 2014 at Kemrock, following facts are submitted.*

- NEVER PARTICIPATED for sanction of Loan with ANY BANK or Financial Institution nor SIGNED any document for loan from Bank/ Financial Institution.
- NEVER SIGNED any ANNUAL BALANCE SHEET for Company for any year.
- NEVER SIGNED any cheque since M.R.Patel was not authorized signatory for release of payment to any party
- NEVER worked as In-charge of FINANCE or MARKETING DEPARTMENT. CFO and Head of Marketing used to report to Chairman & Managing Director (C&MD) as per Organogram. .(Annex 9)
- NEVER SIGNED ANY DOCUMENT regarding Finance/ loan.

M.R.Patel played role solely as OCCUPIER for factory Act compliance as Director in board. (Annex 4&5, 5A) Role of M.R.Patel was to compile status of carbon fiber project, Health, Safety, Environmental Improvement and issues, technological / R&D improvements, energy reduction measures and forward to Secretary for Annual Report.

Financial details were compiled by CFO in consultation with C&MD & other directors having banking/ finance expertise used to review with Internal / External Statutory Auditors. M.R.Patel was NOT AT ALL involved in any Financial matter from December 2007 to July 2014 including period as Director from June 2010 to June 2013

*M.R.Patel NEVER received single rupee in addition to CTC as per appointment as CEO (Carbon Fiber Project) or **director (as Occupier) from Kemrock and was working as full time employee.** No beneficiary even for 1 (one) rupee beyond CTC as per appointment order in Kemrock. **M.R.Patel was never promoter in company.***

M.R.Patel has not acquired any disproportionate asset after induction in board of Kemrock during June, 2010. Entire Income declared to Income Tax Department and taxes paid.

M R Patel was never involved in releasing payment to parties on daily, weekly, monthly, yearly basis and was not involved in deciding any priorities for release of payment.

M.R.Patel is 69 years age suffering from Medical problem including Diabetics, B.P, Kidney, Hypertension, obesity etc.

In connection with FIR lodged by ICICI bank, Honourable Judge, Gujarat High Court, has given following comments in Judgement on 12.01.2015 after review of relevant documents. Referred Gujarat High court Judgement attached.

Mahendra R Patel was salaried employee of company {Kemrock} and was not promoter in the company.

Mahendra R Patel was given additional assignment as Occupier for Factory Act Compliance between 03.06.2010 to 02.06.2013 due to his purely technical experience for Safety, Boiler, Emission related compliance.

Mahendra R Patel was not promoter in the company.

Mahendra R Patel was never involved in releasing payment to any party.

Considering above facts, it is neither logical nor legal to consider me as responsible person for ANY VIOLATION STATED IN YOUR ABOVE REFERRED SHOW CAUSE NOTICE.”

9. Details of alternate contact of other Noticees were gathered. As regards to Kemrock, it is noted that as per information available at the website of MCA and BSE it has given common address viz, “Asoj, Vadodara Halol Express Way, Tal. Waghodia, Vadodara, Gujarat, 391510” and no other alternate address could be found. As regards to Navin R Patel, it is noted that he has given address of KMP in Vadodara, Gujarat as his address in his account maintained with Kotak Securities Ltd, and also his one more address in Vile Parle, Mumbai was noted. As regards to N K Jain, it is noted that he has an alternate address in Udaipur, Rajasthan.
10. Subsequently, notice of hearing dated March 8, 2018 were sent to Noticees through Speed Post AD at addresses of noticees inter-alia including alternate addresses of Navin R Patel and N K Jain, whereby (a) Noticees were once again informed about the present adjudication proceedings, (b) provided with copy of SCN to Noticees viz, Kemrock, Navin R Patel and N K Jain to which delivery of SCN was uncertain / not delivered, (c) Noticees were advised to submit reply to SCN latest by March 22, 2018, and (d) Noticees were granted opportunity of personal hearing on March 23, 2018 and for the same they were required to confirm their presence for the hearing two working days before the hearing.
11. Said Notices of hearing were delivered to Mahendra R Patel and N K Jain, while it remained undelivered at addresses rest of the Noticees. As regards to said notice of hearing sent to KMP at his Vadodara address remain undelivered with remark “Item delivery attempted, unclaimed”. As regards

to Notice of hearing addressed to Navin R Patel sent at his alternate address which is also the address of KMP remain undelivered with remark “*Item delivery attempted, unclaimed*”, and further, notice of hearing sent at another address of Navin R Patel in Vile Parle, Mumbai remain undelivered with remark “*Item delivery attempted, addressee moved*”. As regards to Notice sent at address of Kemrock same remained undelivered with remark “*Item delivery attempted, addressee left*”.

12. Scanned copy of the said Notice of hearing was also sent vide e-mail dated March 13, 2018 to e-mail IDs of Noticees viz, Kemrock (*gopalshah@kemrock.com*, *investor@kemrock.com*, *tushar78664@gmail.com*) KMP (*kalpesb@kemrock.com*, *kalpeshpatel@kemrock.com*, *kalpeshpatel102@gmail.com*), Navin R Patel (*navin_54@yahoo.com*), Mahendra R Patel (*mrpatel1098@gmail.com*) and N K Jain (*b623m529@vseindia.com*). From the above, e-mail sent to IDs with domain kemrock.com remain undelivered, while e-mail to other IDs (at least one related to each of the Noticees) were delivered.
13. As regards to the said hearing notice sent through SPAD and e-mail, response was received from N K Jain and Mahendra R Patel. N K Jain, in his said response vide his e-mail dated March 19, 2018 it was confirmed that he will avail the scheduled hearing on March 23, 2018. As regards to said response of Mahendra R Patel, vide e-mail dated March 17, 2018, he reiterated his earlier submissions made in e-mail dated September 5, 2018 and once again requested to remove his name from the present adjudication proceedings. Further, vide subsequent two e-mails of Mahendra R Patel dated March 21, 2018 following was informed. He is in USA from March 24, 2018 to May 23, 2018 and he reiterated that he is not involved in alleged violations and requested removal of his name from the present adjudication proceedings, provided details of his contact (e-mail, phone no. provided) in USA at which he could be approached for any clarification required w.r.t submissions made by him, requested to communicate to him about removal of his name from present adjudication proceedings. In view of above e-mail submissions / request, vide e-mail dated March 21, 2018 to Mahendra R Patel, it was inter-alia informed that his submissions have been taken on record and after perusal of the same along with other material on record, decision will be made in the adjudication order.
14. N K Jain availed the scheduled hearing on March 23, 2018, wherein he made oral submissions and sought permissions to submit written submissions within two weeks. N K Jain was allowed to make written submissions latest by April 6, 2018, failing which it will be construed that he has no submissions to make in his defense.
15. N K Jain, vide e-mail dated April 4, 2018 forwarded scanned copy of his submissions in reply to the SCN, which has following key submissions:

‘It is respectfully submitted that Kemrock Industries and Exports Ltd, one of the Noticee is under liquidation before the Hon'ble High Court of Gujarat. It is understood that the Official liquidator has already

liquidated/ sold the assets of the company. It is submitted that the records of the company is under the custody of the Liquidator. I, the Noticee, have no access of the records of the company.

It is submitted that I, the Noticee was hired for a specific assignment to get restructured the various loans availed by the company from various lenders as the company was under financial stressed. I was designated as CFO on 16/04/2012 but considering the financial position of the company, I offered to designate as CFO & Company Secretary to save the cost to the company. I was exclusively involved in restructuring matters on full time basis and was not involved in its day to day affairs. The restructuring and rehabilitation proposal was approved by Allahabad Bank, the Lead Bank in the consortium, in the month of July, 2012 which was approved by the Company's Board in the meeting held on 14/08/2012 (copy of Minutes are attached with your notice). Some other Lenders also approved the restructuring in the month of August/ September, 2012 as well.

My association with the company was for a very short period of time and till the restructuring was got approved and implemented. Not satisfied with the working scenario and practices adopted by the company as well as non-payment of salaries, I had put in my papers. Company had appointed one Mr. N K Jani, as Company Secretary as per Minutes of Board Meeting dated 26th November, 2012, a copy where of is attached for your kind reference. The said Mr. Jani had also signed the Financial Statement for the year ended 30 June, 2012 and I, the Noticee had refused to sign the said Annual Financial Statement. Upon noticing MCA site where my name was still appearing, I approached the company to remove my name as Company secretary, I was asked to submit fresh resignation on 31/03/2013 and which was also not uploaded in MCA system. Again I brought to the notice of the same to the company and it was finally uploaded on 25th April, 2013. Copies of said letters are attached. Kindly note that after great follow up I was paid my dues salary up to November, 2012 only.

That I specifically deny violation of the Regulations 12(1) and 12(3) read with Clause 1.2 and 3.2.1 of Part A of Schedule I of the SEBI (Prohibition of Insider Trading) Regulations, 1992, alleged in the said notice.

Inappropriate closure of trading window

The reply as submitted by the Company containing the chronology of events relating to PSI is purely a routine process generally adopted by all the organisations in the business world. The data from manufacturing sites collected are in the form of MIS and were collected on periodical basis throughout the year. These were related to compilation of production, dispatches, consumptions, rejections, manpower, waste, etc. etc. These data were required for submission to the bankers periodically and for arriving at drawing power for working capital and nothing is construed as financial data related to PSI.

I have no idea in what context the above information was asked for and the submission as made by the company which are generic in nature, relate to the routine practice and procedures adopted by a company in its day to day business affairs. As such any interpretation made otherwise with respect to closure of trading window is totally out of context and beyond any imagination and has no relevance in the present case.

Internal Auditors (K R Shah & Associates, Chartered accountants) are engaged by a company for the routine internal audit and system audit for the purpose of ascertaining weakness and lapses in the system and to provide suggestions to strengthen the same and to submit its report. This is the requirement of various Regulations to have an Internal Audit and is placed before the Audit Committee as required by the law and the statutory auditors does rely on the same while reporting to the shareholders.

As such, the above events do not fall under the definition of PSI and it is the Quarterly/ annual financial results, which are PSI, are relevant in this case. It is to be noted that in a company like Kemrock size/ scale, even the results are being prepared in the last moment, how the PSI will come into existence on July 10, 2012.

It is submitted that the SCN under reply is vague, ambiguous and does not indicate contravention of Regulations under the SEBI Act, 1992.

As required, the Company had scheduled the Board Meeting and intimated to the members of the Board and issued the intimation for closure of trading window from August 07, 2012 to August 15, 2012. The Board Meeting was held on 14th August, 2012.

The Code of conduct for prevention of Insider Trading was framed by the company as prescribed and adopted appropriate mechanisms and procedures to enforce the Codes specified under sub-regulations (1) and (2).

From the above it is clear that no PSI was unpublished during the alleged period and the company rightly closed the trading window from August 07, 2012 to August 15, 2012 with respect to the PSI.

It is submitted that only such information, which, if published, is likely to materially affect the price of the securities of the company can be treated as price sensitive information. A reading of Regulations 2(ha) and 2(k) of the Trading Regulations, 1992 shows that UPSI must be an information which can affect the price of the securities of a company and which may be published by that company alone. This is not the case here.

Trading in the shares of the company without pre-clearance

It is submitted that I, the Noticee, has no access to the records in respect to the alleged trading in the shares of the company by Kalpesh Patel and Binitaben Patel during UPSI period and its prior period and Post UPSI period.

The necessary disclosures, as required under the Regulations were made by the company to the Exchanges with respect to the change in the Shareholding of the Promoter group entities through Biren Shah, Manager-Secretarial, (Secretarial Department).

It is submitted that I was not aware of the trades of Kalpesh Patel and Binitaben Patel to ascertain the implementation of the Code as alleged in the SCN. I understand Kalpesh Patel had pledged/provided its sizeable shareholding in the company to avail loan against shares and on account of default in repayment or margin call, the pledge were invoked by the lenders from time to time and the same were duly reported to the Exchanges. The company vide its letter dated February 02, 2015 had already submitted to SEBI that Patel Binita K, did not do any transactions in the scrip of Kemrock Industries and Exports Ltd, during the closure of trading windows, hence the question of pre-clearance does not arise.

The Code of conduct for prevention of Insider Trading was framed by the company as prescribed and adopted appropriate mechanisms and procedures to enforce the Codes specified under sub-regulations (1) and (2).

Based on the above it is submitted that I, the Noticee was not aware of or had any knowledge of the trades of Kalpesh Patel and Binitaben Patel as alleged in the SCN.

That the Noticee respectfully submits that there is no violation of clause 1.2 and 3.2.1 of Part A in Schedule I under Regulation 12 (1) read with 12 (3) of SEBI (Prohibition of Insider Trading) Regulations, 1992. Therefore no question of imposing penalty on the Noticee as alleged in terms of Rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and Section 15HB of the SEBI Act, 1992."

16. It was noted that no reply to SCN and no confirmation for availing the scheduled hearing on March 23, 2018 was received till March 20, 2018 from Kemrock, KMP and Navin R Patel. Hence, vide notice of hearing dated March 20, 2018 which was affixed on March 23, 2018 at the last known address of above noticees viz, for Kemrock at "Asoj, Vadodara Halol Express Way, Tal. Waghodia, Vadodara, Gujarat, 391510", and for KMP and Navin R Patel at "202, Atlantic, IV, Near Natubhai Centre Race Course Circle, Vadodara – 390007", a final opportunity of hearing was provided on April 9, 2018, and Noticees were also advised to submit their reply to SCN on immediate basis. Further, said notice for final hearing scheduled on April 9, 2018 was also communicated to Kemrock, KMP and Navin R Patel through e-mail dated March 28, 2018.
17. On the scheduled date of hearing viz, April 9, 2018, authorised representative (AR) appeared on behalf of KMP and BKP (wife of KMP, and noticee along with KMP in a separate SCN). AR submitted separate written submissions on behalf of KMP and BKP in reply to a separate SCN issued to KMP and BKP. AR shown unawareness about SCN issued to KMP and four other

Noticees in the present matter. AR in his oral submissions, informed that due to the ongoing liquidation process of Kemrock, Noticees do not have access to relevant information / records of the company. During the hearing, AR requested for (a) copy of 2 SCNs dated August 24, 2017 viz, instant SCN issued to KMP and 4 others and SCN issued to KMP and BKP, and (b) Copy of e-mail dated March 17, 2015 from company to SEBI replying to queries about pre-clearances by Noticees. Copy of the said SCNs and e-mail was provided to the AR along with minutes of the hearing. AR sought time to make further submissions in the matter, and in this regard, Noticees were allowed to make further submissions to SCN, latest before April 27, 2018.

18. In reply to the SCN issued to KMP and four others, Authorised Representative made following key submissions on behalf of KMP through the letter and e-mail dated April 27, 2018:

“(1) It is submitted that for the same and one alleged non compliance of the SEBI Regulation the noticee had been served earlier Show Cause Notice which has been appropriately been replied. The Noticee submits that the reply/ submission filed on 9.4.2018 may also be treated as part and parcel of this reply.

(2) That the Show Cause Notices alongwith documents were never served submitted earlier. On 9.4.2018, certain documents along with two show cause notices handed over to the AR of the noticee. The show cause notices and scattered documents are completely mess. After reading the notices nothing can be understood as to what actual offence/ violations of Regulation on his part. These notices cannot be said to have given actual notice of violations of Rules to the noticee.

(3) It is submitted that the AR of the Noticee had submitted copy of the Order passed by the Hon'ble Gujarat High Court whereby the Court in exercise of the power under Section 454 of the Companies Act, 1956 appointed Official Liquidator vide order 5.8.2014. The AR has also submitted a copy of Media Release of Reliance Industries Ltd indicating acquisition of Assets of Kemrock Industries. It is submitted that noticee had no access to the records and the officials who dealt the matter in 2012. Therefore the noticee had no option but to reply on the scattered records handed over to AR on 9.4.2018.

*(4) It is submitted that as per chart in para 6 of the SCN it is alleged that the noticee contravened Regulation 12 (1) and 12 (3) read with Clause 1.2 of Part A of Schedule I of the SEBI (Prohibition of Insider Trading) Regulations, 1992. It is submitted that identical allegation was made in para 8 and 9 of earlier SCN. It is submitted that there is nothing on record to suggest that noticee had violated Regulation 12 (1) or 12 (3) and Schedule 1 of Part A of SEBI (Prohibition of Insider Trading), Regulation 1992. In Compliance of Rule 12 (1) Code of Internal Procedure and Conduct was framed and the same was literally followed. The compliance officer was appointed and made responsible for SEBI Compliance. As per the knowledge of the noticee no transactions were made by them without pre-clearances or relaxation/ exemption wherever it was required. As of now the noticee has neither access to the record of the Company nor the Compliance Officer, as such he requested the OL to provide copy of the pre-clearances and exemption granted to him by the Compliance Officer during all four quarters of 2012. A copy of the Code of Conduct for Prevention of Insider Trading and letter to OL requesting copy of the Pre-Clearances and Exemption granted to them under the Code are enclosed as **Enclosure -1** and*

PARAWISE REPLY

(5) The averments made in para 1, 2, 3 and 4 of the SCN are matter of record need no comment, except the contravention of SEBI Regulations as alleged in the column in para 2, which is not correct hence vehemently denied.

(6) The averments made in para 5 of SCN are not true in the manner it has been stated therein.

(7) REPLY TO PARA 5.1, 5.2 AND 5.3 AND PARA 6

The averments under reply in the above head are not true in the manner it has been stated hence denied. The allegation in para 5.1 was clarified as it was typographical mistake which was immediately informed to the Exchange. It is submitted that vide letter dated 6.8.2012 as per the Code it was declared that "Trading Window" shall remain closed from 7.8.2012 to 15.8.2012. It is wrong to allege that closure should be from 10.7.2012. Even otherwise there is no allegation against noticee that he was in possession of PSI and transacted contrary to Rule. Copy of the letter dated 6.8.2012 is enclosed as ENCLOSURE-2. It is submitted that as per the Code of Conduct, Compliance Officer was appointed and made responsible for all the Compliances. As per the knowledge

of the Noticee transactions between 10th July to 14th August, 2012 and prior to UPSI and Post UPSI, if any was made, made only after due pre-clearance. For which copy of pre-clearance and Relaxation/exemption under Code of Conduct has been sought from the OL. Vid e-mail dated 17.3.2015, Company has not informed, as alleged, that noticee did not take pre-clearance. The Allegation is in correct on the face of record. Copy of email dated 17.3.2015 is enclosed as Enclosure -3

(8) It is submitted that the initiation of Adjudication Proceeding is clear abuse of process of law. Vide proceeding of the Whole Time Member Appointing Adjudication Officer dated 7.1.2016, the learned Member was not sure as to which of the entities in the Scrip of Kemrock Industries & Exports Ltd. fall into the possible violation of the provisions of SEBI Act, 1992. There is nothing in the proceeding which led satisfaction of the learned Whole Time Member that there are sufficient ground to inquire into. The allegation for contravention was of two quarters in the year 2012. Adjudicating officer was appointed in the year 2016 knowingly that now noticee had no access to the records and officials of the Company as OL was appointed by the Hon'ble High Court on 5.8.2014. Show Cause Notice was issued on 24.8.2017. Nowhere it has been indicated what benefit the noticee acquired by violating the Regulations under the SEBI Act. It is submitted that the Noticee would like to draw attention of your goodself to para 8, 10, 11 and 17 of the Ruling of Hon'ble Supreme Court reported in (1969) 2 SCC 627 filed on 9.4.2018 wherein the Hon'ble Court has held that "An order imposing penalty for failure to carry out a statutory obligation is the result of quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or acted in conscious disregard of its obligation. Penalty will not also be imposed merely it is lawful to do so".

(9) It is submitted that the noticee is an old man. No wrong was committed by him to acquire benefit out of that. He is suffering from heart disease. As such I may request your Goodself may kindly take a lenient view and drop the proceeding in the interest of justice.

It is therefore requested that the Noticees may kindly be given an opportunity of personal bearing at any convenient date suitable to your goodself so that his defence may be explained to your goodself."

19. Though KMP, in his aforesaid reply dated April 27, 2018 alleged lack of clarity related to the allegations and supporting documents, however, upon perusal it is noted that the common SCN issued to the Noticees viz, KMP and 4 others covers the relevant aspects related to the alleged violations in respect of the aforesaid Noticees.
20. As regard to delivery of SCN and Notices to Kemrock, it is matter of records that physical notices were sent to last known address viz, "Asoj, Vadodara Halol Express Way, Tal. Waghodia, Vadodara, Gujarat, 391510" which is also its address as per details available on website of MCA and BSE. SCN and first hearing notice were not delivered to Kemrock through SPAD, and subsequently, hearing notice dated March 20, 2018 along with copy of SCN was affixed at its above last known address. Further, all the Notices sent through e-mail were marked to last known contact e-mail IDs of Kemrock viz, tushar78664@gmail.com (contact e-mail as per MCA website), gopalshah@kemrock.com and investor@kemrock.com (contact e-mail ID as per BSE website).
21. As regards to Navin R Patel, SCN was earlier sent to his address in USA as per records, however, it could not be confirmed whether same was delivered or not. Subsequent notices of hearing and copy of SCN was sent to his alternate addresses in Mumbai and Vadodara through SPAD, wherein his Vadodara address viz, "202, Atlantic, IV, Near Natubhai Centre Race Course Circle, Vadodara – 390007" is common with the address of KMP, another noticee in the matter, however, this notice could not be delivered. Subsequently, hearing Notice was delivered at the aforesaid Vadodara address through affixture on March 20, 2018.

22. During the present proceedings, upon perusal of corporate disclosure made by Kemrock to Stock Exchange (BSE), it is noted that in two corporate disclosure (including one update) made by Kemrock on April 15, 2013 to BSE, it was informed that *“Kemrock Industries and Exports Ltd has informed BSE that Shri Navin Patel, Independent Director of the Company passed away on April 13, 2013, at his residence in United States of America”*, and the date of demise through a update to BSE on the same day was corrected as April 13, 2013. From the above information, it is noted that the Noticee, Mr. Navin R Patel was deceased before the initiation of the present proceedings.

CONSIDERATION OF ISSUES AND FINDINGS:-

23. Upon perusal of allegations in respect of the Noticees, submissions of the Noticees, if any, in reply to SCN, and the documents available on record, following issues arise for consideration in the present matter:
- a) Whether there was a failure on part of Kemrock in making appropriate disclosure of shareholding of KMP at the end of December 2012 quarter to BSE, which thereby resulted into violation of Clause 35 of erstwhile listing agreement read with section 21 of SCR Act?
 - b) Whether Noticees failed to close the trading window in appropriate manner, and thereby violated the Clause 3.2.1 of Part A of Schedule I under Regulation 12(1) read with Regulation 12(3) of PIT Regulations, 1992?
 - c) In view of the non-compliance, if any, by the KMP and BKP with code of conduct for prevention of insider trading adopted by Kemrock, whether Noticees failed to implement the said code under Regulation 12(1) and 12(3) read with Clause 1.2 of Part A of Schedule I of the PIT Regulations, 1992?
 - d) Whether penalty can be imposed upon Kemrock under Section 23(a) of SCR Act for non-compliance, if any, of Clause 35 of erstwhile listing agreement read with section 21 of SCR Act,?
 - e) Whether penalty can be imposed upon noticees under Section 15HB of SEBI Act for non-compliances, if any, of provisions of PIT Regulations, 1992 mentioned in issues (b) and (c),?
 - f) If penalty is liable upon Noticees, what quantum of monetary penalty should be imposed upon Noticees considering the factors mentioned Section 23J of SCR Act and Section 15J of SEBI act, as applicable?
24. Before going forward, it is important to refer the following relevant provisions alleged to have been violated:

Clause 35 of Listing Agreement

35. The issuer company agrees to file with the exchange the following details, separately for each class of equity shares/ security in the formats specified in this clause, in compliance with the following timelines, namely :-

- a) One day prior to listing of its securities on the stock exchanges.
- b) On a quarterly basis, within 21 days from the end of each quarter.
- c) Within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital”

Section 21 of Securities Contracts (Regulations) Act, 1992

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

Regulation 12(1) read with 12(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and relevant clauses of the model code of conduct under the said regulations

Code of internal procedures and conduct for listed companies and other entities.

12. (1) All listed companies and organisations associated with securities markets including :

- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;
- (b) the self-regulatory organisations recognised or authorised by the Board;
- (c) the recognised stock exchanges and clearing house or corporations;
- (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and
- (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations 45 [without diluting it in any manner and ensure compliance of the same].

.....

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

SCHEDULE I PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

.....

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of “Price Sensitive Information”, pre-clearing of designated employees’ and their dependents’ trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term ‘designated employee’ shall include :—

- (i) officers comprising the top three tiers of the company management];
- (ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

.....

3.2 Trading window

3.2.1 The company shall specify a trading period, to be called “trading window”, for trading in the company’s securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished.

3.2.3 The trading window shall be, inter alia, closed at the time :—

- (a) Declaration of financial results (quarterly, half-yearly and annually).
 - (b) Declaration of dividends (interim and final).
 - (c) Issue of securities by way of public/ rights/ bonus etc.
 - (d) Any major expansion plans or execution of new projects.
 - (e) Amalgamation, mergers, takeovers and buy-back.
 - (f) Disposal of whole or substantially whole of the undertaking.
 - (g) Any changes in policies, plans or operations of the company.
- 62 [3.2.3A The time for commencement of closing of trading window shall be decided by the company.]

Issue a) - Whether there was a failure on part of Kemrock in making appropriate disclosure of shareholding of KMP at the end of December 2012 quarter to BSE, which thereby resulted into violation of Clause 35 of erstwhile listing agreement read with section 21 of SCR Act?

25. Though no reply has been received from Kemrock under the present proceedings, however, another Noticee, viz, KMP brought to the records that *Kemrock Industries and Exports Ltd, one of the Noticee is under liquidation before the Hon'ble High Court of Gujarat. It is understood that the Official liquidator has already liquidated/ sold the assets of the company.* KMP, also placed on record the copy of the hon'ble High Court of Gujarat passing directions for winding up of the company. In this regard, it is noted that Hon'ble High Court of Gujarat in the matter of Chongqing Ploycomp International Corp Vs. Kemrock Industries and Exports Ltd. (Company Petition No. 83 of 2013 decided on May 04, 2015) had passed a winding up order and appointed an Official Liquidator who has been vested with all the powers and authority to conduct liquidation proceedings of the Noticee. It is inter alia noted that the Hon'ble High Court of Gujarat has passed following order in respect of winding up of the KIEL:

"13.the Court is inclined to pass final winding up order by exercising the powers under Section 434 with following directions
..... (i) The court is inclined to depute OL as full fledged provisional Official Liquidator and is directed to take possession of the company and while taking possession, keep with him the bank personnel i.e. officers of Allahabad bank and other bank consortium, as submitted by counsel of the bank. Let they take the possession of the company jointly and complete the formalities on or before 6.5.2015.
(ii) The possession be taken over and inventory be prepared and said inventory be signed by Allahabad Bank as well as OL as well as company's representative, who are present in accordance with law.
(iii) The Allahabad Bank is at liberty to depute the security agency, as agreed before this Court, at the site at their own cost.
.....
(vii) The date of inspection of property is fixed from the date of publication of advertisement till last date of submission of forms and offers between 11-00 am to 4- 00 pm. The last date of submission of offer and bid is 15.6.2015
.....
(x) Thereafter, the auction will be taken in the open court and the parties will be at liberty to raise their offers at the time of auction.
(xi) The bank is at liberty to open the bank Account in the name of O.L for Kemrock Industries and Exports Ltd. (company in liquidation) and maintain it as per Rules and keep all the money in said account.
.....
15.The Court is of the considered view that despite time being given to the Company from August, 2014, if nothing happened till date, the request for stay of order is rejected. The OL and all the parties are directed to act according to directions issued hereinabove.
16. In view of aforesaid, all the aforesaid petitions and applications are disposed of."

26. Though, as per records, SCN / HN was affixed at the last known address of Kemrock, however, no reply could be procured from this Noticee, which also appear to be due to the fact that Kemrock is presently under winding up / liquidation process.
27. For the purpose of adjudication in the matter, it is deem appropriate to deal with the issue as to whether the instant adjudication proceedings initiated in respect of Kemrock can be proceeded with in view of the aforesaid order of the Hon'ble High Court of Gujarat. It is noted that the said order has been passed under section 434 of the Companies Act, 1956 and further consequences of that order have to follow in terms of the Companies Act, 2013 by virtue of repeal and saving provisions contained in Section 465 thereof. In this regard, it will be appropriate to refer to

provisions of Section 446 of the Companies Act, 1956 and corresponding provisions of Section 279 of the Companies Act, 2013. The said provisions are reproduced as under:

Section 446 of the Companies Act, 1956

Suits stayed on winding up order

(1) *When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose.*

(2) *The court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of –*

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made under section 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company;

whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.

(3) *Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that Court.*

(4) *Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a high Court.*

Section 279 of the Companies Act, 2013

Stay of suits, etc., on winding up order.—

(1) *When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose: Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.*

(2) *Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court."*

28. It is noted that the provisions of Section 279 of the Companies Act, 2013 are *pari materia* the provisions of Section 446 of the Companies Act, 1956 in so far as the commencement or continuation of any 'other legal proceedings', after winding up order, are concerned. In this regard, it is relevant to refer to the judgement of Hon'ble High Court of Bombay, in the case of *Deutsche Bank v. S.P. Kala* {(1990) 67 Com. Cases} wherein it held as under with regard to this issue:-

"Section 446 of the Companies Act provides that, when a winding up order is made or the official liquidator is appointed as provisional liquidator, no suit or legal proceedings should be commenced or if pending on the date of the winding-up order, shall be proceeded with, against the company, except with the leave of the court and subject to such terms as may be imposed. Subsection (2) further lays down that the court which is winding-up the company shall, notwithstanding anything contained in any other law in force, have jurisdiction to entertain or dispose of, inter alia, any suit or proceeding by or against the company, whether such suit or proceeding has been instituted or is instituted. A careful examination of these provisions of law makes it clear that once a winding-up order is made or the official liquidator is appointed as provisional liquidator, no proceedings can continue or be instituted against the company without the permission of the court. It is further clear that jurisdiction to entertain or dispose of any suit or proceeding by or against the company is vested in the company court without any kind of restriction..... The expression "any suit or proceeding by or against the company" is wide enough to bring within its sweep any kind of suits."

29. Thus, it is mandatory to obtain leave of the Court / Tribunal for commencing the instant proceedings against KIEL which was to be wound up in terms of aforesaid order dated May 04, 2015 passed by Hon'ble High Court of Gujarat. It is noted that that Adjudicating Officer was

appointed in the present matter on July 31, 2015 i.e, after the aforesaid winding up order passed by the Hon'ble High Court of Gujarat. In the instant matter, there is no material on record to suggest that leave of the Court / Tribunal has been obtained to commence these proceedings against KIEL. Therefore, the present adjudication proceedings in respect of Kemrock which is under liquidation cannot be proceeded with in terms of the SCN dated August 24, 2017 in respect of Kemrock.

Issue b) - Whether Noticees failed to close the trading window in appropriate manner, and thereby violated the Clause 3.2.1 of Part A of Schedule I under Regulation 12(1) read with Regulation 12(3) of PIT Regulations, 1992?

30. It has been alleged that trading window was closed during August 07-15, 2012 instead of July 10, 2012 to August 15, 2014 as the Price Sensitive Information (PSI) regarding quarterly results exist during July 10, 2012 to August 15, 2012.
31. Kemrock, which is under liquidation, has not replied to the allegations made in the SCN. As regards to other Noticees following are the findings:
32. KMP, Managing Director of Kemrock during relevant period involving alleged violation, and another Noticee in the SCN, in his reply inter-alia contended that *it is wrong to allege that closure should be from 10.7.2012.....as per the Code of Conduct, Compliance Officer was appointed and made responsible for all the Compliances*. Further, in generality it has been argued that *due compliance was followed and reference was made to code of conduct adopted by Kemrock, and also to the e-mail dated August 6, 2012 by Kemrock to its employees inter-alia informing about closure of trading window during August 7, 2012 to August 15, 2012 and advising adherence to the code of conduct*. Hence, KMP has contended that there was no inappropriate closure, and also put the onus of compliance in this regard on Compliance Officer.
33. Mahendra R Patel, Director of Kemrock during relevant period involving alleged violation and another Noticee, in reply to SCN has put forward following submissions. *He joined Kemrock as Chief Executive Officer (CEO) of Carbon Fiber Project / Plant in December, 2007. His role was to compile status of carbon fiber project, Health, Safety, Environmental Improvement and issues, technological / R&D improvements, energy reduction measures and forward to Secretary for Annual Report. He was additionally given responsibility as Occupier from 03.06.2010 for factory act compliance (Boiler, Factory act related safety, emission of toxic gases etc). Since Occupier has necessarily to be Director, he was inducted in the Board of Kemrock from 03.06.2010 to 02.06.2013. He was not involved in financial matters of the company viz, never participated for sanction of loan with any bank, never signed annual balance sheet, was not signatory for signing any cheque, etc, and he played role solely as OCCUPIER for factory Act compliance as Director in board*. It is noted that copy of Board resolution dated June 3, 2010 provided by Mahendra R Patel corroborates his above contention that he was appointed as additional director to facilitate his role as "Occupier", and thereby it is noted that he had specific role to play as Director of the Company and did not had role in the general operations / administration of the company.

34. N K Jain, Compliance Officer of Kemrock during relevant period involving alleged violation, while replying to the SCN has inter-alia put following key submissions forward. *The information provided to SEBI w.r.t chronology of events leading to approval / publication of June 2012 quarter financial results was submitted in general context without knowledge in what context the same is being read. The data collection from sites within ten days from end of June 2012 quarter was meant with respect to collection of data for MIS, further, appointment of internal audit and system audit was for purpose of ascertaining weakness and lapses in the system and to provide suggestions to strengthen the same and to submit its report, etc. Even in companies bearing size/ scale similar to Kemrock, results are finalised in final moments, and Price Sensitive Information could not have been available on July 10, 2012. As required, the Company had scheduled the Board Meeting and intimated to the members of the Board, and issued the intimation for closure of trading window from August 07, 2012 to August 15, 2012. The Board Meeting was held on 14th August, 2012. The Code of conduct for prevention of Insider Trading was framed by the company as prescribed and adopted appropriate mechanisms and procedures to enforce the Codes specified under sub- regulations 12(1) and (2). No Price Sensitive Information was unpublished during the alleged period and the company rightly closed the trading window from August 07, 2012 to August 15, 2012 with respect to the Price Sensitive Information.* Compliance Officer of Kemrock, and Noticee in the matter, Mr. N K Jain has argued that PSI could not have come into existence on July 10, 2012 i.e., within this short period of end of the quarter, and information collected by company till July 10, 2012 was general MIS data not meant to be interpreted in this manner to hold the same as PSI.
35. Based on the letters dated January 20, 2014 and November 21, 2014 and February 02, 2015 from Kemrock to SEBI, a chronology of event leading to dissemination of UPSI was observed. It was observed that data from manufacturing sites was collected, compiled and auditors were intimated for initiation of Audit work within 10 days from the end of the quarter i.e., July 10, 2012. Hence, it has been alleged that the PSI came into existence on July 10, 2012. Further, Internal Audit report was submitted before Audit Committee on July 20, 2012, and subsequently, agenda including the agenda for approval of financial results was sent to Board on August 4, 2012. It is pertinent to note that above information do not provide evidence to substantiate the allegation that the financial results came into existence on July 10, 2012, as have been alleged.
36. For the purpose of closure of trading window, relevant clauses of model code of conduct under PIT Regulations, 1992 states - Clause 3.2.1 of the said model code of conduct specify that “*the company shall specify a trading period, to be called “trading window”, for trading in the company’s securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished.*” In this context, under Clause 3.2.3 of the said code of conduct “*Declaration of financial results (quarterly, half-yearly and annually)*” is specified as one of the information at which trading window is required to be closed by the company. Further in this context, Clause 3.2.3A of the said code of conduct specify that “*The time for commencement of closing trading window shall be decided by the company*”.

37. As per code of conduct for prevention of insider trading adopted by Kemrock under PIT Regulations, 1992 (hereinafter, also referred to as “**said code adopted by Kemrock**”), following are the provisions related to closure of trading window:

“Trading window” is the period during which a designated employee may buy/sell the securities of the company, subject to this code applicable SEBI Rules / Regulations/ Law.

(b) Trading window shall be closed during the following periods:

- 1. From 07(seven) days prior to the date of the Board meeting fixed for the approval of financial results for the relevant period till 24 hours after the announcement of the financial results for the relevant period to the Stock Exchanges.*
- 2. From the date of circulation of the agenda for the meeting of the Board of Directors, in which any material, price sensitive and unpublished information, including the following are proposed:*

- *Proposal for declaration of Dividend (interim or final);*
- *Proposal for issue of securities by way of public / rights / bonus, etc;*
- *Proposal for any major expansion plans or execution of new projects;*
- *Proposal for amalgamation, mergers, takeovers, and buy-backs;*
- *Proposal for disposal of whole or substantially the whole of the undertaking;*
- *Any significant change in policies and plans relating to operations of the Company;*

*The Trading Window shall re-open 24 hours after the notification of these information to the Stock Exchange.
.....”*

38. It is noted that as per code of conduct for prevention of Insider Trading adopted by Kemrock under PIT Regulations, 1992, trading window was required to be closed seven days prior to the board meeting for the approval of financial results till 24 hour after the announcement of the financial results to the Stock Exchange. It is noted from the records and information available on the website of BSE that disclosure was made to BSE on August 14, 2012, 7:26 pm (as per the date and time stamp of the fax sent to BSE reflected on the disclosure uploaded by BSE on its website).
39. In view of the above, it is noted that trading window was closed by Kemrock as per the laid code of conduct. Given the above observations, it is noted that allegations against the Noticees for not closing the trading window during July 10, 2012 to August 15, 2012 are not established.

Issue c) - In view of the non-compliance, if any, by the KMP and BKP with code of conduct for prevention of insider trading adopted by Kemrock, whether Noticees failed to implement the said code under Regulation 12(1) and 12(3) read with Clause 1.2 of Part A of Schedule I of the PIT Regulations, 1992?

40. Investigation in the matter reveals that KMP, Managing Director of Kemrock during relevant period and his wife BKP executed trades in the shares of Kemrock during June 2012 to September 2012 without taking necessary pre-clearances required under code of conduct for prevention of insider trading adopted by Kemrock. In this regard, it has been alleged that since such trades were executed under knowledge of Noticees, there was failure at the end of Noticees to implement the

code of conduct for prevention of Insider Trading adopted by Kemrock under Regulation 12(1) and 12(3) read with Clause 1.2 of Part A of Schedule I of the PIT Regulations, 1992.

41. Kemrock, which is under liquidation, has not replied to the allegations made in the SCN. As regards to other Noticees following are the findings:
42. KMP, Managing Director during relevant period involving alleged violation, made the following submissions- *As per the knowledge of the Noticee transactions between 10th July to 14th August, 2012 and prior to UPSI and Post UPSI, if any was made, only after due pre- clearance. For which copy of pre-clearance and Relaxation/exemption under Code of Conduct has been sought from the OL. Vide e-mail dated 17.3.2015, Company has not informed, as alleged, that noticee did not take pre-clearance. The Allegation is incorrect on the face of record. Copy of email dated 17.3.2015 is also submitted.*
43. Upon perusal of said e-mail dated 17.3.2015 from Kemrock to SEBI, it is noted that Kemrock informed SEBI that *the said 13,448 shares was purchased by Patel Binitaben K on 27.07.2012, and for the said transaction entered into on 27.07.2012, as per our records, no pre-clearance was taken by Patel Binitaben K. However, it is noted that post the execution of said buy transaction, Patel Binitaben K had made a disclosure to the Stock Exchanges on 01.08.2012 in consonance with the provisions of SEBI Insider Trading Regulations.* From the above, it is noted that Kemrock had clearly stated that no pre-clearances were sought by BKP.
44. As regards to pre-clearances, if any, required by KMP, the Noticee has argued that trades were undertaken only after due pre-clearances. It is noted that aforesaid e-mail dated 17.03.2015 from Kemrock to SEBI only provide information about pre-clearances not obtained and filing of disclosures by BKP, and there is no information on record wherein company stated that KMP had obtained the required pre-clearances. Further letters from Kemrock and KMP dated January 05, 2015 on record, states that KMP did not undertake dealing in shares of Kemrock at Stock exchange during June 2012 to September 2012 for which pre-clearances were allegedly not sought, but the lenders had executed the same and as they were not bound to report same to KMP, no pre-clearances were sought by KMP. Contrary to these submissions by KMP and company, it is noted that aforesaid trades under question during June 2012 to September 2012 were actually executed from the trading account of KMP only. Hence, going by admitted fact by KMP during the investigation, no pre-clearances of trades were sought by KMP. It is also matter of record that KMP entered into reversal trades during June 2012 to September 2012, prohibited under the said code adopted by Kemrock.
45. It is on record that KMP was Managing Director of Kemrock during relevant period involving alleged violation, and in said capacity he was a designated employee under the said code adopted by Kemrock. KMP, being Managing Director of Kemrock was ought to be aware of the said code adopted by Kemrock, and as per the said code adopted by Kemrock, he and his wife were bound to adhere with its provisions applicable to them. Given the above, KMP was accountable for any

breach of the provisions of the code inter-alia the pre-clearances required to be taken by him for dealing in shares of Kemrock.

46. Though there is subjectivity involved to specifically ascertain whether sufficient efforts were made to implement the said code of conduct, however, there are instances which shows the acts of the company for implementation of the said code. For instance, it is noted from the records that prior to closure of trading window during August 7-15, 2012, on August 6, 2012, an e-mail was sent to the employees of Kemrock informing about the above closure of trading window along with the copy of the said code of conduct adopted by Kemrock and advise to follow the same. Above shows that communications were exchanged with the employees regarding the applicability of the said code adopted by Kemrock.
47. It is also pertinent to note that instant allegations resulted from the mere fact that Kemrock did not provide any confirmation to “whether Kemrock, non-independent directors and compliance officer were not aware of the relevant trades of KMP and BKP”. It is noted that Mahendra R Patel and N K Jain in their reply to SCN have denied awareness about trades of KMP and BKP done without pre-clearances.
48. Given the above, there is no credible evidence available to hold the Noticees responsible for failure to implement code of conduct for prevention of insider trading adopted by Kemrock, and the failure, if any, to seek pre-clearances of their trades was individual failure on part of KMP/BKP, which is being dealt with separately.

Issue - d) Whether penalty can be imposed upon Kemrock under Section 23(a) of SCR Act for non-compliance, if any, of Clause 35 of erstwhile listing agreement read with section 21 of SCR Act,?

Issue – e) Whether penalty can be imposed upon noticees under Section 15HB of SEBI Act for non-compliances, if any, of provisions of PIT Regulations, 1992 mentioned in issues (b) and (c),?

Issue – f) If penalty is liable upon Noticees, what quantum of monetary penalty should be imposed upon Noticees considering the factors mentioned Section 23J of SCR Act and Section 15J of SEBI act, as applicable?

49. Given the findings in the matter, the allegations mentioned in issues b) and c) could not be established and consequently issues d), e) and f) do not require consideration.
50. Proceedings in respect of Kemrock cannot be carried forward giving regard to the fact that it is under liquidation and there is no material to suggest that leave of the Court / Tribunal has been obtained to commence these proceedings in respect of Kemrock.

51. Further, upon demise of Mr. Navin R Patel, present proceedings in respect of him are abated.

ORDER

52. In view of the above, after taking into consideration findings, and all the facts and circumstances of the case as mentioned above, common Show Cause Notice dated August 24, 2017 in respect of Kemrock Industries and Exports Ltd, Mr. Kalpesh Mahendrabhai Patel, Mr. Mahendra R Patel and Mr. Navin R Patel is disposed without imposition of penalty.

53. In terms of rule 6 of the SEBI Adjudication Rules and SCR Adjudication Rules, copies of this order is being sent to the Noticees and also to the SEBI.

Date: June 25, 2019
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer