

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
ADJUDICATION ORDER NO. EAD/BJD/BKM/ 15-19 /2018-19**

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**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

**In respect of:**

- 1. KSS Limited (PAN: AAACG5103D )**
- 2. Sanjay Lal (PAN:AAEPL6967H)**
- 3. Neelam Samant (PAN:AESPN2220H)**
- 4. Ashok Gangwani (PAN:AAFPG0318J) and**
- 5. Parag M. Sanghavi (PAN: ATYPS3041A)**

**In the matter of KSS Limited**

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), on a complaint from one Mr Arvind Ghosh alleging issue of misleading announcements by KSS Limited (earlier known as K Sera Sera Ltd) and offloading of shares and price manipulation by the management of KSS Limited (hereinafter referred to as Noticee No. 1/KSS/Company), examined into the alleged irregularity in the trading in the shares of KSS and into the possible violation of the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the 'SEBI Act 1992') and various Rules and Regulations made there under during the period from October 01, 2007 to March 31, 2010 by KSS, Sanjay Lal (Managing Director)(Noticee No.2), Neelam Samant (Company Secretary)(Noticee No.3), Ashok Gangwani (Director)(Noticee No.4), and Parag M Sanghavi (Promoter)(Noticee No.5) all collectively referred to as Noticees.

2. It was revealed that during the quarter ended September 2008, the promoter shareholding reduced to 39, 12,552 shares (5.83% of the share capital) from 43,50,504 shares (6.47% of the share capital) in quarter ended June 2008. Thereafter, it marginally reduced further in quarter ended December 2008. In quarter ended March 2009, the promoter shareholding reduced substantially to 5,21,150 shares (0.78% of share capital) indicating that the promoters exited the company. Thereafter by quarter ended June 2009 it reduced to almost nil and subsequently to Nil in quarter ended September 2009.
3. It was further revealed that KSS failed to disclose the pledge of shares and the invocation of shares to the exchanges. Therefore, it was alleged that KSS and Sanjay Lal, MD have violated Regulation 8A(4) of SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 2009 (hereinafter referred to as SAST (Amendment) Regulations, 2009).
4. Further, KSS failed to make disclosures regarding non implementation of corporate announcements to the stock exchanges. Therefore, it was alleged that KSS and Sanjay Lal, MD have also violated Clause 36(7) of the Listing Agreement r/w 21 of Securities Contracts(Regulation) Act, 1956 (hereinafter referred to as SC(R)A, 1956 and Clause 2.1 of Schedule II of Regulation 12(2) of SEBI (PIT) Regulations, 1992 (hereinafter referred to as PIT Regulations 1992) and the Compliance Officer Neelam Samant (Noticee no.-3) of KSS has violated Clause 3.2 of Schedule II of Regulation 12(2) of PIT Regulations, 1992.
5. It was further revealed that Ashok Gangwani had sold 2,00,000 shares on November 6, 2007. However, he disclosed belatedly on December 06, 2007. Therefore it was alleged that Ashok Gangwani, violated the provisions of Regulation 13(4) read with 13(5) of PIT Regulations, 1992.

6. Noticee No.-5, Parag M. Sanghavi, Promoter of KSS made disclosures of pledged shares and invocation of pledged shares belatedly to KSS. Therefore it was alleged that Parag M. Sanghavi has violated Regulation 8A(1) & 8A(3) of SAST Amendment 2009.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

7. SEBI has, therefore, initiated adjudication proceedings and Shri Prasad Jagdale, Deputy General Manager, had been appointed as Adjudicating Officer (AO) vide communique dated March 03, 2016 under Section 19 of the SEBI Act, 1992 read with Section 15-I (1) of SEBI Act 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules 1995") and under Section 23-I of SC(R)A, 1956 and Rule 3 of SC(R) Procedure for Holding inquiry and imposing Penalties by Adjudicating Officer) Rules, 2005 (SCR Rules) to inquire and adjudge under Section 15A(b) SEBI Act 1992, Section 15HB of SEBI Act 1992 and Section 23A(a) of SC(R) Act, 1956 against KSS and its managing director Sanjay Lal, under Section 15HB of SEBI Act 1992 against Neelam Samant, the company secretary of KSS and Section 15A(b) SEBI Act 1992 as against the director Ashok Ganawani and the promoter Parag M Sanghavi for the alleged violations committed by them. Pursuant to the inter departmental transfer I have been appointed as Adjudicating Officer vide Order dated November 24, 2017

#### **SHOW CAUSE NOTICE, REPLY AND HEARING**

8. A common Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/BJD/MAS/29293/1-5/2017 dated November 24, 2017 along with the communique having the details of all the alleged and penal provisions was issued to the Noticees under Rule 4 of SEBI Adjudication Rules to show cause as to why

an inquiry be not held against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under the SEBI Act 1992 and SC(R) Act 1956 for the violations alleged to have been committed by the Noticees. KSS vide its letter dated December 06, 2017 requested for the complete set of the SCN which was provided to it. However, KSS failed to file the detail reply. Therefore, the replies dated September 02, 2010 and July 21, 2012 filed by KSS to SEBI have been taken into record. Since the SCN to Sanjay Lal returned undelivered, the same was served by affixture on November 30, 2017. Neelam Samant vide letter dated December 09, 2018 and email dated April 21, 2018 replied to the SCN. Ashok Gangwani vide letter dated December 21, 2017 has replied to the SCN. Prag M. Sanghvi vide letter dated December 06, 2017 requested for a time for 4 weeks. However, no reply to the SCN has been filed till the date by Prag M. Sanghvi. Since Parag M. Sanghavi failed to file the detail reply, the information submitted by KSS to Stock Exchange and submission by depositories has been taken into record.

9. In the interest of natural justice and in terms of Rule 4 (3) of the Adjudication Rules, vide notices dated April 11, 2018 Noticees were granted an opportunity of personal hearing on April 20, 2018. Hearing Notices are served to all the Noticees.
10. During the hearing held on April 20, 2018, Noticees Neelam Samant and Ashok Gangwani attended the hearing and reiterated the submission as filed by them. KSS vide letter dated April 18, 2018 requested time for filing the reply. Accordingly the time till May 07, 2018 was allowed to file the reply. However, KSS vide letter dated May 07, 2018 further requested for additional 3 weeks' time to file the reply on the ground of non-availability of lawyer due to court vacation. I am not inclined to allow further time as the SCN was issued long back i.e. on November 24, 2017. Another opportunity of personal hearing was granted to the Noticee on May 8, 2018. However, the Noticees other than Neelam Samant and

Ashok Gangwani have not availed the opportunity of personal hearing. All Noticees have been given sufficient opportunity to file the reply. I am proceeding based on the material available on record and on the submissions made by Noticees.

## CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

11. I have carefully perused the charges leveled against the Noticees in the SCN, written submissions made and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

- a. Whether KSS and Sanjay Lal, MD have violated Regulation 8A(4) of SAST (Amendment) Regulations, 2009, Clause 36(7) of the Listing Agreement r/w 21 of SC(R)A, 1956 & Clause 2.1 of Schedule II of Regulation 12(2) of PIT Regulations, 1992 and the Compliance Officer (Noticee no.-3) has violated Clause 3.2 of Schedule II of Regulation 12(2) of PIT Regulations, 1992?***
- b. Whether Ashok Gangwani, failed to file disclosures for sale of shares in terms of Regulation 13(4) read with 13(5) of PIT Regulations, 1992?***
- c. Whether Parag M. Sanghavi failed to file disclosures for pledge of shares and invocation of pledged shares in terms of Regulation 8A(1) & 8A(3) of SAST (Amendment) Regulations, 2009?***
- d. Does the violation, if any, attract the penalties on KSS and its managing director Sanjay Lal under Section 15A (b) SEBI Act 1992, Section 23A (a) of SC(R) Act, 1956 & Section 15HB of SEBI Act 1992, Neelam Samant under Section 15HB of SEBI Act 1992, Ashok Ganawani and Parag M Sanghavi under Section 15A (b) SEBI Act 1992 for the alleged violations committed by them.***
- e. If so, what would be the quantum of monetary penalty that can be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the Act?***

12. Before proceeding further, I would like to refer to the relevant provisions of law which read as under:

SAST (Amendment) Regulations, 2009

**Disclosure of pledged shares.**

8A. (1) *A promoter or every person forming part of the promoter group of any company shall, within seven working days of commencement of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2009, disclose details of shares of that company pledged by him, if any, to that company.*

(2) .....

(3) *A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of invocation of pledge on shares of that company pledged by him, inform the details of invocation of such pledge to that company.*

*Explanation: For the purposes of sub-regulations (1), (2) and (3) the term “promoter” and “promoter group” shall have the same meaning as is assigned to them under Clause 40A of the Listing Agreement.*

(4) *The company shall disclose the information received under sub-regulations (1), (2) and (3) to all the stock exchanges, on which the shares of company are listed, within 7 working days of the receipt thereof, if, during any quarter ending March, June, September and December of any year,:-*

(a) *aggregate number of pledged shares of a promoter or every person forming part of promoter group taken together with shares already pledged during that quarter by such promoter or persons exceeds twenty five thousand; or*

(b) *aggregate of total pledged shares of the promoter or every person forming part of promoter group alongwith the shares already pledged during that quarter by such promoter or persons exceeds one per cent of total shareholding or voting rights of the company, whichever is lower.*

**PIT Regulations 1992**

12(2) *The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.*

***Prompt disclosure of price sensitive information***

2.1 *Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.*

***Overseeing and coordinating disclosure***

3.1 *Listed companies shall designate a senior official (such as compliance officer) to oversee corporate disclosure.*

3.2 *This official shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure.*

***Continual disclosure.***

13 (4) *Any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) 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.*

(5) *The disclosure mentioned in sub-regulations (3), (4) and (4A) 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.*

***SC(R)A 1956***

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.*

### **SUBMISSIONS MADE BY NOTICEES:**

13. Vide letter dated December 21, 2017 the Noticee Ashok Gangwani submitted as under:

*-That from the communique it was clear that the Ld. Adjudicating Officer was appointed to probe and penalize Noticee No.4 only for violations alleged to have been committed of Section 15A(b) thereof. However, the captioned Notice instead proposes to take action against Noticee No.4 under Section 15HA of the SEBI Act, 1992. This proposed action is clearly contrary to the specific reference made to the Ld. Adjudicating Officer. It is thus respectfully submitted that the proposed action is without jurisdiction since it is contrary to the Appointment Order and terms of the reference itself.*

*Violation of the SEBI PIT Regulations, 1992*

*-That Noticee No.4 was appointed as a non-executive director on the board of KSS Ltd. (formerly K. Sera Sera Productions Ltd.) ("Company") in or around 2003. In his capacity as a non-executive director, he had neither any involvement nor control over the daily management of the Company.*

*-That in or around 2007-2008, there was a change in the management and in the constitution of the Company's board of directors. As a consequence, thereof, Noticee No.4 tendered his resignation from the Company's directorship in March 2008. Prior to his resignation, Noticee No.4 sold 35,828 shares of the Company on January 25, 2007 and made the requisite disclosure under the SEBI (PIT) Regulations, 1992. However, due to incorrect advice from his financial advisor, he had sold 2,00,000 shares of the Company on November 6, 2007 and disclosure could not be made in terms of Regulation 13 (4) of SEBI (PIT) Regulations, 1992. It is respectfully submitted that this default was on account of incorrect financial advice and was inadvertent. At the time, Noticee No.4 was led to believe that he was not statutorily required to make any disclosure under SEBI*



*(PIT) Regulations, 1992 and at the time he believed this to be true. It is respectfully requested that no adverse inference ought to be drawn from this inadvertence.*

*-That by virtue of being a non-executive director on the Company's board, Noticee No.4 had no involvement in the Company's daily affairs. As such, his access to any unpublished price sensitive information (if at all) was virtually negligible and he did not conduct the impugned transactions on the basis of any unpublished price sensitive information. Noticee No.4's sale of 2,00,000 shares of the Company was made in the usual course of his business and was necessitated by a need for liquidity of funds required for his personal affairs. This was the sole motive behind the sale of shares and not any other purpose. It is respectfully reiterated that his failure to disclose the sale under the SEBI (PIT) Regulations, 1992 was purely unintentional and inadvertent.*

- That in the present case, Noticee No.4 has neither enjoyed any disproportionate gain and/or advantage nor has he caused any grave and/or disproportionate loss to any investors from the transaction impugned in the Notice. This is evident from the price movement of the shares of the Company on the Bombay Stock Exchange Ltd. for the period October 25, 2007 to November 16, 2007. The price movement of the shares of the Company on the Bombay Stock Exchange was between the range of Rs. 3 to Rs. 4.40 per share and there has not been any significant downward movement in the share price of the Company nor has there been any significant change in the share price of the Company as such. Furthermore, Noticee No.4 has never been penalized or convicted under the SEBI Act.*

*Allegations concerning;*

- i. Pledge of shares by Parag Sanghvi, Mantra Trading Pvt. Ltd. and Vajra Trading Pvt. Ltd.*
- ii. Corporate Announcements made by the Company.*

*-That Noticee No.4 had no role to play and did not participate in any manner in the impugned pledge of shares. These shares appear to be part of the holdings of Parag Sanghvi, Mantra Trading Pvt. Ltd and Vajra Trading Pvt. Ltd.*

*- Noticee No.4 has no concern or relation to the same. Indeed Noticee No.4 also did not attend any board meetings of the Company between 2006-2008.*

*-This position is also borne out from the Company's Annual Reports. Noticee No.4 cannot be held liable in any manner whatsoever qua the impugned pledge of shares.*

*-That insofar as the impugned Corporate Announcements are concerned, Noticee No.4 resigned from the Company's board on or around March 17, 2008. This fact is borne out from the Company's Annual Report for FY 2007-2008.*

*-The Impugned Corporate Announcements were made on or around September 2009, a year after Noticee No.4's resignation. Thus, no liability can be fastened onto Noticee No.4 for these acts.*

14. Noticee Neelam Samant submitted as under:

*- That she was the company secretary for the period December 29, 2009 to February 27, 2011. Further during this period she was on maternity leave of 6 months from April 2010 to September 2010.*

*-That regarding corporate announcements made on September 8, 2009, September 29, 2017, October 12, 2009, and September 01, 2009 and September 14, 2009, she was not employee of the company during this period.*

*-That she had taken all necessary actions in proper compliance and had given timely and adequate disclosures. She had not involved or done anything deliberately or not failed to disseminate the information to the exchanges.*

15. I find from the record that the shares of KSS are listed on BSE and NSE. KSS is a media entertainment producer and distributor, producing media for cinema, television and software. KSS was established in 1995 as Garnet Paper Mills Ltd

and renamed as K. Sera Sera Limited in 2011 and later changed to KSS in December 2012.

**KSS & Sanjay Lal (Noticee 1 &2)**

16. Before I proceed further, I note that inspite of the time granted to KSS Limited for filing the reply and opportunity of personal hearing, KSS Limited has neither filed the reply nor availed the opportunity of personal hearing. This demonstrates the leisurely approach of the KSS.
17. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has inter alia, observed that"..... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".
18. It is also pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT), in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also inter-alia, observed that: "...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."
19. The alleged charges against KSS and Sanjay Lal are Wrong and delayed disclosure of Pledged shares by promoter to NSE, Failure to disclose the pledged details of

promoters to BSE, Failure to disclose the invocation of pledged shares to BSE and NSE and Non-disclosure of non-implementation of Corporate Announcements.

#### A. Wrong and Delayed disclosure of Pledged shares by promoter to NSE

20. I note the Board of Directors of KSS for the year April 01, 2007 - March 31, 2010 are as follows:

(Source: MCA website, Annual report 2010)

Name of the director	Designation	Date of Resignation
Ashok Pamani	Promoter, Non-Executive	26.05.2008
Ramesh Pamani	Non Independent, Executive	22.01.2008
Amar Panghal	Non Independent, Executive	24.04.2008
Sanjay Gupta	Non Independent, Executive	30.06.2008
Rajesh Pavithran	Non Independent, Executive/Managing Director	28.02.2008
Ashok Gangwani	Non-Executive, Non Independent	17.03.2008
A P Naidu	Non-Executive, Independent	27.04.2007
Pramod Sawant	Non-Executive, Independent	31.10.2007
Rajiv Malhotra	Non-Executive, Independent	26.05.2008
Dinesh Bhanushali	Non-Executive, Independent	12.08.2008
Deepak Bhanushali	Non-Executive, Independent	17.03.2008
Venkatrao Satyam	Non-Executive, Independent	20.06.2008
Prakash Kumar Shah	Non-Executive, Independent	-
Raj Sital Motwani	Non-Executive, Independent	22.01.2008
Sanjay Lai	Managing Director	-
Anuraj Benara	Non-Executive Independent	09.01.2010
Husain Shattaf	Non-Executive Independent	-
Rajeev Benara	Additional Director	-

21. The details of change in promoter's shareholdings during the investigation period are as follows:

S. N	Promoter Name	Quarter ended Dec 07-Jun 2008	Quarter ended Sept 2008	Quarter ended Dec 2008	Quarter ended Mar 2009
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		No of Shares held	% to Share capital	No of Shares held	% to Share capital	No of Shares held	% to Share capital	No of Shares held	% to Share capital
1	Parag Sanghavi	4,89,975	0.73	4,89,975	0.73	4,89,975	0.73	-	-
2	Vajra Trading Co Pvt Ltd	4,25,700	0.63	4,25,700	0.63	4,25,700	0.63	-	-
3	Mantra Trading P Ltd	18,32,450	2.73	13,94,498	2.08	13,94,498	2.08	-	-
4	Ashok Pamani	9,28,779	1.39	9,28,779	1.38	9,18,779	1.37	3,47,550	0.52
5	Kamini Pamani	6,73,600	1	6,73,600	1	6,73,600	1	1,73,600	0.26
	Total	43,50,504	6.48	39,12,552	5.83	39,02,552	5.81	5,21,150	0.78

  

S · N	Promoter Name	Quarter ended Jun 09		Quarter ended Sept 09	
		No of Shares held	% to Share capital	No of Shares held	% to Share capital
1	Parag Sanghavi	-	-	--	-
2	Vajra Trading Co Pvt Ltd	-	-	-	-
3	Mantra Trading P Ltd	-	-	-	-
4	Ashok Pamani	-	-	-	-
5	Kamini Pamani	300	0.0004	-	-
	Total	300	0.0004		

22. As per shareholding pattern, I note that the promoter holdings reduced from 6.48% for the quarter ended June 2008 to zero in September 2009.

23. In terms of Regulation 8A(1) of SEBI (SAST) (Amendment) Regulations, 2009 as amended with effect from January 28, 2009:

*"A promoter or every person forming part of the promoter group of any company shall, within seven working days of commencement of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2009, disclose details of shares of that company pledged by him, if any, to that company.*

*Further, in terms of Regulation 8A(4), The company shall disclose the information received under sub regulations (1), (2) and (3) to all the stock exchanges, on which the shares of company are listed, within 7 working days of the receipt thereof, if, during any quarter ending March, June, September and December of any year."*

In accordance with above provisions, Parag Sanghavi, promoter of KSS submitted the details of shares pledged to KSS on February 20, 2009 with a delay of 7 days. However, there are no records to suggest that Vajra Trading Co Pvt Ltd and

Mantra Trading Co. Pvt. Ltd., promoters of KSS disclosed their pledged shares to KSS after commencement of aforesaid regulations. The details of pledge transaction of promoter along with date of intimation to KSS and stock exchange are as under :

Sr. No	Name of the promoter	Pledgee Details	Date of Pledge	No of Shares Pledged	Date of intimation to KSS by promoters	Date of intimation by KSS to Stock Exchange
1	Vajra Trading Co Pvt. Ltd	Global Trade Finance Pvt. Ltd	10.01.08	4,25,700	12.01.08	28.04.09
2	Parag Madhu Sanghavi	Global Trade Finance Pvt. Ltd	05.10.07	4,89,975	20.02.09	28.04.09
3	Mantra Trading Co Pvt. Ltd	Yes Bank Ltd.	05.07.07	10,00,000 \$	06.07.07	Not disclosed
		Global Trade Finance Pvt. Ltd	11.01.08	4,37,952*	12.01.08	28.04.09
				3,94,498*	12.01.08	28.04.09
	Total			27,48,125		
<b>\$ Pledge by Mantra Trading Co. Pvt. Ltd. with Yes Bank Ltd. not disclosed by the Company to NSE</b>						
<b>*No. of shares pledged by Mantra Trading Co.Pvt. Ltd. with Global Trade Finance Pvt. Ltd. wrongly disclosed by the Company to NSE</b>						

24. I note that the Company had disclosed the pledge details of promoters to NSE, vide its letter dated April 28, 2009. During the investigations, it was observed that details of pledged shares of promoter provided to NSE were wrong. In this regard, KSS, vide its letter dated April 3, 2014, submitted that it had inadvertently mentioned 13,94,498 shares of Mantra as pledged with Global Trade Finance Ltd., instead of 8,32,450 shares. I perused the letter dated April 28, 2009 of KSS and note that only 13,94,498 pledged shares were disclosed to NSE. From the above table, I note that total number of shares pledged by Mantra Trading Co Pvt Ltd was 18,32,450 shares which includes 10,00,000 shares pledged with Yes Bank Ltd and 8,32,450 shares pledged Global Trade Finance Ltd. Thus, it is apparent that KSS did not inform 4,37,952 shares to NSE which was under reporting of actual pledged shares. In light of above observation, I am not inclined to accept the submission of Noticee that it was inadvertently error. It is clear that the details of

shares pledged with Yes Bank were not disclosed but were shown as shares pledged with Gopal Trade Finance Ltd. Thus, from the facts mentioned above, I note that 4,37,952 pledged shares were not disclosed at stock exchange and therefore under reported /suppressed and not available in public domain to the extent. Further, I also note that there was a delay of more than two months in disseminating the pledge details of the promoters to NSE. I note that the Company did not disseminate the pledge details of the promoters to BSE. BSE, vide email dated March 6, 2014 has also confirmed that exchange had not received any disclosure under Regulation 8A(4) of SAST (Amendment) Regulations, 2009. I am of the view that disclosure regarding pledge transaction by promoters, mandated by aforesaid regulations, is critical for investor to take informed decision and therefore any delay or attempt to suppress such information or submit wrong information cannot be viewed leniently. Considering substantial delay in disclosures, coupled with the fact that the details of shares pledged with Yes Bank were not disclosed at all, the manipulative intent of deliberately suppressing the information from public domain emerges and therefore cannot be considered an inadvertent error. Thus I conclude that the charge of wrong and delayed disclosures of pledged shares of Mantra to NSE against KSS and Sanjay Lal, MD stands established.

#### **B. Failure to disclose the pledged details of promoters to BSE**

25. BSE vide email dated March 6, 2014 has confirmed that it has not received any disclosures with respect to the pledged detail of the promoter. I conclude that the charge of non-disclosure of pledged shares of promoters to BSE against KSS and Sanjay Lal, MD stands established.

#### **C. Failure to disclosure invocation of pledged shares of promoters**

Sr No	Name of the promoter	Pledgee Details	Date of Pledge	No of Shares Pledged	Date of invocation	Date of intimation to KSS by promoters	Date of intimation by KSS to Stock Exchanges
1	Vajra Trading Co Pvt Ltd	Global Trade Finance Pvt. Ltd	10.01.08	4,25,700	09.03.09	16.03.09	Not submitted
2	Parag Madhu Sanghavi	Global Trade Finance Pvt Ltd	05.10.07	4,89,975	16.03.09	31.03.09	Not submitted
3	Mantra Trading Co Pvt Ltd	Yes Bank Ltd.	05.07.07	10,00,000	12.03.09	16.03.09	Not submitted
		Global Trade Finance Pvt Ltd	11.01.08	4,37,952	18.09.08	22.09.08	Not submitted
				3,94,498	16.03.09	23.03.09	Not submitted
	Total			27,48,125			

26. It is also noted that Noticee No.-1, KSS has failed to file disclosures to NSE & BSE within 7 working days of receipt of disclosures received from the promoters for invocation of their pledge and thus violation of Regulation 8A(4) of SAST (Amendment) Regulations, 2009 alleged against KSS stands established.

27. Further, I note from the SCN that KSS made delayed disclosure of pledged shares of promoters to NSE, it made wrong disclosure of pledged shares of promoter - Mantra Trading Co. Pvt. Ltd. to NSE, it did not disseminate the details of pledge shares of the promoters to BSE and it failed to file disclosures of invocation of shares of the promoters to NSE & BSE within 7 working days despite receiving the same from the promoters. Therefore the charge of non-disclosure of invocation of pledged shares of promoters stands established against KSS and Sanjay Lal, MD stands established.

#### **D. Non-disclosure of non-implementation of Corporate Announcements**

28. I note that KSS carried out various announcements with respect to production of Hindi & Hollywood films, allotment of equity linked instruments to Yes Bank, convertible warrants on preferential basis to Hindustan Times, Dainik Bhaskar &



Bennett Coleman & Co. Ltd., Optionally Convertible Redeemable Bonds to Global Trade Finance Ltd. Bidding for IPL teams, GDR issue, opening of multiplexes and developing of new technology for digital cinema.

29. It was noted that the following Corporate Announcements made by the Company were not implemented:

Date	Corporate announcement
September 08, 2009, September 29, 2009, October 12, 2009	Allotment of convertible warrants to Bennett Coleman & Co. Ltd.
September 01, 2009	Bidding for IPL teams
September 14, 2009	Production of Hollywood film "Americans in Danger"

30. I note that KSS, vide letter dated September 2, 2010, admittedly submitted that allotment to Bennet Coleman \* Co Ltd could not material and IPL bidding withdrawn. The relevant extracts of the letter are as under:

- "The board in their various meeting had considered the proposal for issue of convertible warrants to Bennett Coleman & Co. Ltd. On preferential basis as per their letter of intent received and issue was subject to necessary approvals. However, the deal didn't materialize",
- "The company decided that bidding for an IPL team was not financially viable and it did not want to get embroiled in any negative publicity. The decision thereafter was taken to withdraw from participation"

31. I note that while the Company had disclosed to the stock exchanges about proposal for allotment of convertible warrants to Bennett Coleman & Co. Ltd., bidding for IPL teams, but it failed to disclose regarding non implementation of these announcements to the stock exchanges as is required under Clause 36 of Listing Agreement. In terms Clause 2.1 of Code of Corporate Disclosure Practices for prevention of Insider Trading as contained in Schedule II of PIT Regulations, 1992, price sensitive information shall be given by listed companies to Stock

Exchanges and disseminated on a continuous and immediate basis. In terms of 3.2 of Code of Corporate Disclosure Practices for prevention of Insider Trading as contained in Schedule II of PIT Regulations, 1992, the Managing Director shall be responsible for ensuring that the company complies with continuous disclosure requirements, overseeing and coordinating disclosure of price sensitive information to stock exchanges.

32. The main objective disclosures under listing agreement was to enhance the quality of disclosures made by listed entities and seek to achieve fair treatment by inter alia mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision. It is a fact that the information regarding a non-implementation of corporate announcements is a price sensitive information and has direct bearing on prices of shares. Therefore, it is required to be disclosed to stock exchanges immediately. In the present case, Company had failed to disclose and Managing Director, being executive head of KSS, failed to ensure dissemination of the extant information to the Stock Exchanges.

33. Considering that the information regarding the pledge and invocation of such shares is a material price sensitive information, any non-disclosure of such information adversely affects the interests of investors. Since Sanjay Lal is the Managing Director and the executive head of the organization, he is responsible to ensure accurate, fair and timely disclosure/dissemination of such price sensitive information. Any failure on the part of the Managing Director cannot be viewed leniently especially when the critical information of pledged shares and

their invocation was deliberately suppressed by non-disclosure repetitively as observed in the instant case.

34. In view of above, the charge of Non-disclosure of non-implementation of Corporate Announcements, Wrong and delayed disclosure of pledged shares, Non-disclosure of invocation of pledged shares as against KSS and Sanjay Lal, MD stands established. Therefore, I conclude that KSS and Sanjay Lal, being Managing Director of KSS have violated Regulation 8A(4) of (SAST)(Amendment) Regulations, 2009, Clause 36(7) of the Listing Agreement r/w 21 of Securities Contracts(Regulation) Act, 1956 (hereinafter referred to as SC(R)A, 1956 and Clause 2.1 of Schedule II of Regulation 12(2) of PIT Regulations, 1992

**Neelam Samant (Noticee 3)**

35. The Compliance Officer submitted that she was the company secretary for the period December 29, 2009 to February 27, 2011. Further, during this period she was on maternity leave of 6 months from April 2010 to September 2010. Regarding corporate announcements made on September 8, 2009, September 29, 2017, October 12, 2009, and September 01, 2009 and September 14, 2009, as she submitted that she was not employee of the company during this period. Copies of Form 32 in terms of her appointment as compliance officer and her resignation from the company submitted by her in support thereof have been taken into record and I find merit in her submission. Therefore I conclude that the allegations against Noticee Neelam Samant do not stand established.

**Ashok Gangwani, Director (Noticee No.-4):**

36. Noticee No.-4, Mr. Ashok Gangwani was the Director of KSS and he resigned on March 17, 2008. Ashok Gangwani was holding 4,52,401 shares during the quarter ended September 30, 2007. On November 6, 2007, he sold 2,00,000 shares of KSS. Subsequent to this sale of 2,00,000 shares, the holding of Ashok Gangwani reduced to 1.29% of the share capital. He was required to make disclosures to the Company and to the stock exchanges in terms of Regulation 13(4) of PIT Regulations, 1992.

37. Ashok Gangwani submitted that since he was holding less than 5% of shares in KSS at the relevant time and therefore, he was advised that no disclosures were required to be filed with the Company or Exchanges for sale of these shares.

*As per Regulation 13(4) of PIT Regulationa 1992 Any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) 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.*

38. I note that as per above provision any changes in shareholding exceeding Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights require to disclose to the company and stock exchange. I note that Ashok Gangwani was holding 4,52,401 shares prior to the sale of 2,00,000 shares on November 6, 2007 and the value of share sold was more than 5 lakhs. Noticee 4 in his reply admittedly submitted failed to disclose under the aforesaid provisions. BSE also vide email dated March 6, 2014 has confirmed that it has not received any disclosures under Regulation 13(4) read with 13(6) of PIT Regulations 1992. Therefore, the charge of non-disclosure by Noticee stands established.

39. However, I note that Ashok Gangwani, was residing at 12A, Kowloon Centre, 28-29, Ashley Road, Rsimsha Tsui, Kowloon, Hong Kong. Consequently, Kotak Securities (Portfolio Management) had informed KSS regarding sale of shares by the Noticee 4. Based on such information, KSS, vide letter dated December 6, 2007 had disclosed regarding the sale of 2 Lakh share of Noticee 4 to NSE. Accordingly, the information was available in public domain from December 7, 2007 i.e. after one month from the date of sale.
40. Even though the onus is on the Noticee 4 to comply with regulations, I am inclined to consider the disclosure by portfolio management with respect of sale of 2 lakhs and view leniently for the purpose of imposition of penalty.

**Parag M. Sanghavi, Noticee No.-5,**

41. Based on records, I note that Parag M Sanghavi is promoter of KSS. In terms of Regulation 8 A(1) and 8A(3) of SAST (Amendment) Regulations, 2009, Noticee 5 being promoter of KSS is required to inform company within 7 working days from the date of pledge and invocation of such pledge respectively. I note that Noticee 5, the Promoter of KSS delayed disclosures of pledged shares to KSS by seven working days and invocation of pledged shares by four working days. Therefore the allegation of delayed disclosure of pledge and invocation of pledge shares against Noticee 5 stands established and therefore Parag M Sanghavi violated Regulation 8A(1) & 8A(3) of SAST Amendment Regulations, 2009.
42. I note that Parag M. Sanghavi failed to file the detail reply to this SCN. Therefore, I am proceeding further based on material available on record i.e. information submitted by KSS to SEBI and submissions made by depositories. Considering that the delay in submission of disclosure is minimal, I am inclined to take a leniently for the purpose of imposition of penalty.

43. Noticees, by not complying to disclose the sale and pledge of shares in a time bound manner, do not inspire any trust and confidence of its transparency and fairness towards the capital market and also do not allow the investors to take informed decision in their interests.

44. Sections 15A(b) and 15HB of SEBI Act 1992 and Section 23A(a) of SCRA 1956 (as existed during the period of violation) reads as under:

**15A of SEBI Act 1992.** *If any person, who is required under this Act or any rules or regulations made thereunder,-*

*(a) to furnish any document, return or report .....*

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

**15HB of SEBI Act 1992.** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

**23A SC(R)A 1956**

*Any person, who is required under this Act or any rules made thereunder, –*

*(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure.*

45. Here, it is important to refer to the observation of the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** wherein it was held that:

*"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*

46. While determining the quantum of penalty under Sections 15A(b) & 15 HB of SEBI Act 1992, 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.*

47. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticees or the amount of loss caused to an investor or group of investors as a result of the default. I note that, in **Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI**, the Hon'ble SAT has observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

## ORDER

48. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I of the Act and Rule 5 of Rules, I hereby impose a monetary penalties on the Noticees as under:

49.

Sr No.	Noticees	Regulation Violated	Actions Recommended	Penalties
1	KSS Limited	Regulations 8A(4) SEBI(SAST Reg 2009, Clause 36(7) of Listing Agreement r/w Section 21 of SCRA 1956 & Clause 2.1 of Schedule II of Reg 12(2) of SEBI (PIT) Reg 1992	Section 15A(b) SEBI Act 1992, Section 23A(a) of SC(R) Act, 1956 & Section 15HB of SEBI Act 1992	10,00,000/- (Rs Ten Lakhs Only)
2	Sanjay Lal, MD of KSS			10,00,000/- (Rs Ten Lakh Only)
3	Neelam Samant, Company Secretary	Cl 3.2 of Schedule II of Regulation 12(2) of SEBI (PIT) 1992	Section 15HB of SEBI Act 1992	Nil
4	Ashok Gangwani	Reg 13(4) r/w 13(5) of SEBI (PIT) Reg 1992	Section 15A(b) SEBI Act 1992	50,000/- (Rs Fifty Thousands Only)
5	Parag M Sanghavi, Promoter of KSS	Reg 8A(1) & 8A(3) of SAST (Amendment)Reg 2009	Section 15A(b) SEBI Act 1992	50,000/- (Rs Fifty Thousand Only)
<b>Total</b>				<b>21,00,000/-((Rs Twenty One Lakh Only)</b>

50. In my view, the penalty imposed is commensurate with the default committed by the Noticees.



51.The amount of penalties shall be paid either by way of demand draft in favor 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. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to " The Division Chief (Enforcement Department - DCD-II), Securities and Exchange Board of India, SEBI Bhavan, Plot no C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052.

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)	

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

**Date: May 11, 2018**

**Place: Mumbai**

**B J DILIP**

**ADJUDICATING OFFICER**