

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. Order/AS/RM/2024-25/31256-31261]**

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

**In respect of:**

<b>Sr. No.</b>	<b>Name</b>	<b>PAN</b>
1.	M/s. Khemani Distributors and Marketing Limited	AAECK2123P
2.	M/s. Gryffin Advisory Services Private Limited	AAFCM9591G
3.	M/s. BSAS Infotech Limited	AADCB4202B
4.	ONYX Partners	AAFFO1175R
5.	Vijaykumar Mangturam Khemani HUF	AABHV3111Q
6.	Vijaykumar Khemani	AGFPK2444R

**In the matter of Khemani Distributors and Marketing Limited**

**BACKGROUND OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”), during the processing of draft letter of offer of Khemani Distributors and Marketing Limited (hereinafter referred to as ‘**Noticee 1**’/‘**Company**’/‘**KDML**’/‘**Target Company**’), observed certain non-compliances with the provisions of SEBI (Listing Obligations and Disclosure Requirements) 2015 (hereinafter referred to as ‘**LODR Regulations**’), SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2021 (hereinafter referred to as ‘**SAST Regulations**’), and SEBI Circulars by Noticee 1, its promoters and promoter group. SEBI conducted an examination in the matter and based on the findings of examination, w.r.t non-compliances observed, SEBI initiated adjudication proceedings as under:

- a) under Section 15A(b) of SEBI Act against Noticee 1 for the alleged violation of Regulation 31(1)(b) of SEBI (LODR) Regulations 2015 read with SEBI circular no. CIR/CFD/CMD/13/2015 dated November 30, 2015
- b) under Section 15H(ii) of SEBI Act against M/s. Gryffin Advisory Services Private Limited (hereinafter referred as '**Noticee 2'/'GASPL'/'PAC 4'**), M/s. BSAS Infotech Limited (hereinafter referred as '**Noticee 3'/'BSAS'/'PAC 1'**), ONYX Partners (hereinafter referred as '**Noticee 4'/'ONYX'/'PAC 2'**), Vijaykumar Mangtaram Khemani HUF (hereinafter referred as '**Noticee 5'/'PAC 3'**'), and Vijaykumar Khemani (hereinafter referred as '**Noticee 6'/'Acquirer'**') for the alleged violation of Regulation 13 and 25(5) read with Regulation 3(2), 3(3) and 4 of SEBI SAST Regulation, 2011.

### **APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI appointed undersigned as the Adjudicating Officer (AO), vide communique dated August 21, 2024, under Section 15-I (1) of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'SEBI Adjudication Rules') to inquire into and adjudge under the provisions of the Section 15A(b) and 15H(ii) of the SEBI Act, the violations alleged to have been committed by the Noticees.

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

3. Show Cause Notice No. SEBI/EAD/EAD-8/AS/RM/28464/1-6/2024 dated September 05, 2024 (hereinafter be referred to as, the "SCN") was issued to the Noticees under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed on Noticees under Sections 15A(b) and 15H(ii) of the SEBI Act.

4. The allegations in respect of the Noticees *inter alia* brought out in the SCN are as under:

‘ .....

3. Noticee 2,3,4,5,6 submitted draft letter of offer to SEBI, with respect to their open offer to acquire 24.77% of the total outstanding Share Capital and Voting Share Capital of Noticee 1 (Target Company). PAC 1, PAC 2, PAC 3 and PAC 4 are collectively referred to as “PACs”. During the processing of draft letter of offer of the company, SEBI observed certain non-compliances with the respect to the provisions of SAST Regulations and LODR Regulations by the company/its promoters & promoter group which are detailed in the paragraphs given below.

.....

**Wrong Shareholding pattern-**

**A. GASPL shown as Public shareholder in place of Promoter Group of KDML**

4. The manager to the offer disclosed in the letter of offer that GASPL has been wrongfully shown as public shareholder from June 2017 to Sep 2023.
5. During examination of the said open offer, reply of the company and Merchant Banker (MB), following was observed:
- a) GASPL was disclosed as one of the public shareholder in the company (Noticee 1) holding 14.63% of the share capital of KDML.
  - b) Ms. Sushiladevi Khemani is Promoter entity of KDML, and Ms. Savita Agarwal is the sister of Ms. Sushiladevi Khemani. Accordingly, Ms. Savita Agarwal forms part of promoter group of KDML based on the definition of Promoter group as provided under Regulation 2(1)(pp) of ICDR Regulations.
  - c) There are two shareholders of GASPL viz., (1) Ms. Savita Agarwal and (2) Mr. Shrawan Kumar Agarwal. Further, Ms. Savita Agarwal is holding 99 percent shares in GASPL. Accordingly, an association was observed between the GASPL and promoter entities and hence in terms of Regulation 2(1)(pp)(iv) of the ICDR Regulations, GASPL also forms part of the Promoter group of the company.
  - d) Pursuant to queries MB *inter alia* informed, that GASPL had purchased 20,00,400 shares (17.41%) of KDML from open market on June 30, 2017.

- e) As per filings dated April 20, 2024 made on the stock exchange website the company has now disclosed GASPL as part of the promoter group.

**B. SAS, ONYX and Vijaykumar Khemani HUF not shown as Promoter Group entity during 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22**

6. While examining the disclosures in the letter of offer (LoF), it is observed by SEBI (refer page no. 21-26 of LoF) that the following shareholder/Karta holds majority shares in BSAS, ONYX and Vijaykumar Khemani HUF and these entities are part of PACs (as disclosed in the LoF) in the present open offer.

Shareholders / Karta holding	Percentage	Name of the entity
Vikas Vijaykumar Khemani*	73.8%	BSAS
Vijaykumar Khemani	50%	ONYX
Avinashkumar Vijaykumar Khemani* KDML	35% 15%	
Vijaykumar Khemani	Karta	Vijaykumar Khemani HUF
The above shareholders are promoters in KDML		

\*Son of Vijaykumar Khemani, Promoter & Acquirer

7. From the above shareholding details, it is clear that the above entities (BSAS, ONYX, Vijaykumar Khemani HUF) are promoter group of KDML in terms of the definition of 2(1)(pp)(iv) of ICDR. However, the company has not disclosed the same in the shareholding pattern filed with the stock exchange for the said period.
8. From the capital built-up submitted by the merchant banker, it is shown that the on January 01, 2018 there was an inter-se transfer from the promoter (Mr. Vijaykumar Khemani and Mr. Amit Khemani) to BSAS, ONYX and Vijaykumar Khemani HUF.

	Pre-transaction		Transaction		Post-Transaction		Increase/ Decrease in holding
Name	No. of Shares	%	No. of Shares	%	No. of Shares	%	
Vijay K Khemani	49,08,600.00	42.73	-17,76,000.00	-15.76	31,32,600.00	27.27	Decrease
Amit V Khemani	13,81,800.00	12.03	-13,68,000.00	-11.91	13,800.00	0.12	Decrease
			<b>-31,44,000.00</b>				
Vijay K Mangturam	-	-	5,82,000.00	5.07	5,82,000.00	5.07	Increase

<b>Khemani HUF</b>							
<b>BSAS Infotech Ltd.</b>	-	-	9,60,000.00	8.36	9,60,000.00	8.36	<i>Increase</i>
<b>ONYX Partners</b>	-	-	16,02,000.00	13.95	16,02,000.00	13.95	<i>Increase</i>
			<b>31,44,000.00</b>				
<b>Total</b>	<b>62,90,400.00</b>	<b>54.76</b>	<b>-</b>	<b>-</b>	<b>62,90,400.00</b>	<b>54.76</b>	

9. *Considering the inter-se transfer is between promoter and promoter group entities, the same was required to be disclosed in the shareholding pattern filed for half year ended March 2018. However, on perusal of the shareholding pattern filed for half year ended March 2018, none of the three entities were shown as promoter group. Further, these entities shareholding was disclosed under public shareholding. Under public shareholding, only BSAS Infotech name was disclosed.*
10. *It was observed from the capital built-up that two of the promoter group entities (BSAS, Vijaykumar Khemani HUF) sold their entire shareholding in July & Sep 2018 but one of the promoter group entity (ONYX) continued to hold shares (9,07,200 i.e., 7.90%) in KDML. On perusal of the shareholding pattern of Sep 2018, March 2019, Sep 2019, it was observed that ONYX was not shown as promoter group entity. Further, ONYX's shareholding was disclosed under public shareholding (without disclosing its name).*
11. *The company for the first time disclosed ONYX as promoter/promoter group entity in the shareholding pattern filed for half year ended March 2020. It was observed that 3,91,213 shares were disclosed in the Shareholding pattern (SHP) of March 2020. However, as per the capital built up provided by the manager to the offer, ONYX was holding 4,05,600 shares, which means that even though KDML disclosed ONYX as promoter/promoter group entity but number of shares disclosed in the SHP were incorrect.*
12. *It was further observed from the capital built-up that an inter-se transfer of 4,99,800 (i.e., 4.35%) shares took place between Mr. Vijaykumar Khemani (Promoter) and SSAS (promoter group entity) on Sep 23, 2020. Thereafter, the company for the first time disclosed BSAS as promoter group in the shareholding of Sep 2020 but omitted the name of ONYX from the promoter group, despite ONYX holding (4,05,600 i.e., 3.53%) shares of the company. This continued till March 2022.*

13. Further, it was observed from the shareholding pattern (Sep- 2020, March 21, Sep-21, March 2022) that Mr. Vijaykumar Khemani is appearing twice in the SHP under two different categories i.e., as promoter and as promoter group also.

		Sep. 2020 (no. of shares holding)	March 21, Sep 21, March 2022 (no. of shares holding)		Sep. 2020 (no. of shares holding)	
Mr. Vijaykumar Khemani	Promoter	52,65,600	47,94,000	Mr. Vijaykumar Khemani	Promoter	53,76,600
Mr. Vijaykumar Khemani	Promoter Group	8,11,200	4,05,600	ONYX Partners - Rep. Mr. Vijaykumar Khemani	Promoter Group	4,05,600

14. It appears that the company was disclosing Mr. Vijaykumar Khemani (Partner in ONYX as he is holding 50% shares in ONYX) in place of ONYX in the promoter group category for the said period: From Sep 2022 onwards, the company started to disclose ONYX as promoter group entity in the shareholding pattern.

**Summary of non-disclosure of Promoter group entities in the SHP**

Promoter group entities	March 2018		Sep 2018, March 2019 & Sep 2019		March 2020		Sep 2020, March 2021, Sep 2021, March 2022		Sep 2022	
	Holding Shares	Disclosed in SHP as P&PG	Holding Shares	Disclosed in SHP as P&PG	Holding Shares	Disclosed in SHP as P&PG	Holding Shares	Disclosed in SHP as P&PG	Holding Shares	Disclosed in SHP as P&PG
BSAS	Yes	Not disclosed	No	NA	No	NA	Yes	Yes	Yes	Yes
ONYX	Yes		Yes	Not disclosed	Yes	Yes	Yes	Not disclosed	Yes	Yes
Vijaykumar Khemani HUF	Yes		No	NA	No	NA	No	NA	-	-

15. The above non-disclosure of promoter group entities in the SHP had resulted into wrong shareholding pattern filed by the company with the stock exchange.
16. Having regard to the above, Noticee 1 has allegedly failed to disclose GASPL (during the period June 2017 to Sep 2023) and other (BSAS, ONYX, Vijaykumar Khemani HUF) entities (during March 2018 to March 2022), as promoter group and consequently disseminated wrong disclosure of shareholding for the period, as indicated above.
17. In view of the above, **Noticee 1 is alleged to be in violation of Regulation 31(1)(b) of LODR Regulations read with circular no. CIR/CFD/CMD/13/2015 dated November 30, 2015.**

**Delayed public announcement to make an open offer**

**A. By GASPL**

18. During June 2017 to Feb 2024, GASPL had transacted in the scrip of KDML. On two occasions, GASPL had acquired shares from open market, which resulted in increase of promoter and promoter group shareholding collectively beyond the creeping acquisition limit of 5%, as stipulated in Regulation 3(2) of SAST and hence had triggered an open offer under Regulation 3(2) read with Regulation 4 of SAST. The details are as under:

<b>Date</b>	<b>Details</b>	<b>Open offer trigger</b>
June 30, 2017	GASPL acquired 20,00,400 shares amounting to 17.41%	Under Regulation 3(2) of SAST
January 13, 2021	GASPL acquired 8,77,200 shares amounting to 3.82%, when other promoters had already acquired 4.35% during 2020-21	Under Regulation 3(2) of SAST

**By other Promoters/promoter group**

19. On January 01, 2018, certain non-qualifying inter-se transfers were undertaken by the Promoter and Promoter Group, details of which are given in table below. Such inter-se transfer among promoters was not exempted under the Regulations 10 of the SEBI SAST Regulations and was for more than 5% of the creeping acquisition limit as provided Regulation 3(2) of the SEBI SAST Regulations, the same had triggered an open offer under

Regulation 3(2) read with Regulation 4 of the SEBI SAST Regulations in the past. However, being inter-se transfer, there was no change in control or management of the Target Company.

	<b>Pre-transaction</b>		<b>Transaction – 01/01/2018</b>		<b>Post-Transaction</b>		<b>Increase/ Decrease in holding</b>
<b>Name</b>	<b>No. of Shares</b>	<b>%</b>	<b>No. of Shares</b>	<b>%</b>	<b>No. of Shares</b>	<b>%</b>	
<i>Vijay K Khemani</i>	49,08,600.00	42.73	-17,76,000.00	-15.76	31,32,600.00	27.27	Decrease
<i>Amit V Khemani</i>	13,81,800.00	12.03	-13,68,000.00	-11.91	13,800.00	0.12	Decrease
			<b>-31,44,000.00</b>				
<b>Vijay K Mangturam Khemani HUF</b>	-	-	5,82,000.00	5.07	5,82,000.00	5.07	Increase
<b>BSAS Infotech Ltd.</b>	-	-	9,60,000.00	8.36	9,60,000.00	8.36	Increase
<b>ONYX Partners</b>	-	-	16,02,000.00	13.95	16,02,000.00	13.95	Increase
			<b>31,44,000.00</b>				
<i>Total</i>	<b>62,90,400.00</b>	<b>54.76</b>	<b>-</b>	<b>-</b>	<b>62,90,400.00</b>	<b>54.76</b>	

20. On June 30, 2023, the Acquirer, Noticee 6, acquired certain shares from open market, which resulted - increase of his individual shareholding beyond 25%, which warranted an open offer by the acquirer under Regulation 3(3) of the SEBI SAST Regulations. However, the same was not made. The same was disclosed by the manager of the Offer (M/s. Sundae Capital Advisors Private Ltd.) in the letter of offer. The details are as under:

	<b>Pre-transaction</b>		<b>Transaction – 30/06/2023</b>		<b>Post-Transaction</b>		<b>Increase/ Decrease in holding</b>
<b>Name</b>	<b>No. of Shares</b>	<b>%</b>	<b>No. of Shares</b>	<b>%</b>	<b>No. of Shares</b>	<b>%</b>	
<i>Vijay K Khemani</i>	54,10,800	23.55	4,99,200	2.17	59,10,000	25.72	Acquisition through open market

21. It is noted from the letter of offer disclosed on February 02, 2024 that the acquirers and PACs, at time of making the public announcement for the present open offer have taken



*into consideration the past transactions (as listed in paras above) where the requisite open offer was not given in terms of Regulation 3 and 4 read with Regulation 13 and Regulation 25(5) of SAST Regulations, by the acquirer and/or PAC. Accordingly, the price of open offer has been calculated based on these past transactions, assuming the triggering point as the respective acquisition date of shares and control of the Target Company.*

**22. However, the acquirers/PACs have allegedly made delayed compliance with the requirements of past Open Offer obligations under SAST Regulations, 2011. Therefore, the Noticee 2, 3, 4, 5 and 6 (acquirers/PACs) are alleged to be in violation with Regulation 13 and 25(5) read with Regulation 3(2), 3(3) and 4 of SEBI SAST Regulation, 2011.**

.....,

5. The SCN was issued at the last known address of Noticees through Speed Post Acknowledgement Due (SPAD) and email on September 05, 2024. The Noticees' Authorised representative vide email dated September 24, 2024 informed that the Noticees are proposing to apply to SEBI under the SEBI (Settlement Proceedings) Regulations, 2018 and requested for two weeks' time to collate the information and submit a settlement application on their behalf. Vide email dated September 26, 2024 it was informed to the Noticees that they may apply for settlement process under SEBI (Settlement Regulations) 2018 in the manner specified in the said regulations, and accordingly may raise the request for two weeks to submit settlement application with the concerned department of SEBI. Further, Noticees were also advised to submit their reply to the SCN by September 30, 2024. Noticees submitted their reply to SCN vide letter dated September 30, 2024 and requested for a personal hearing.
6. Vide Hearing Notice dated October 01, 2024 an opportunity of hearing on October 18, 2024 was granted to the Noticees. The authorised representatives (ARs) of the Noticees attended the hearing on October 01, 2024 and reiterated the submissions made by the Noticees vide letter dated September 30, 2024. Further, the ARs

undertook to submit additional submissions in the matter. The ARs submitted additional submissions in the matter on October 23, 2024.

7. As per documents available on records, the Noticees' settlement applications were rejected on February 27, 2025, thereafter adjudication proceedings resumed.
8. With respect to allegations in the SCN, the key contentions of the Noticees made in their joint reply vide letters dated September 30, 2024, and October 23, 2024 are as under:

**Letter dated September 30, 2024:**

‘ .....

**Wrong Shareholding Pattern**

***Observation/s at Serial No. 5 and 6 of the SCN***

***Observation/s:*** GASPL shown as public shareholder in place of promoter Group of KDML

*The manager to the offer disclosed in the letter of offer that GASPL has been wrongfully shown as public shareholder from June 2017 to September 2023.*

***Reply:*** On behalf of our clients it is herewith submitted and admitted that Gryffin Advisory Services Private Limited (GASPL) is a part of promoter group of KDML in terms of Regulation 2(1)(pp)(iv) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (**‘SEBI ICDR Regulations’**) and acquired 17.41% shares of KDML (Company) from the open market in June 2017. The owners of GASPL technically fall within the definition of Promoter Group but they have no financial and operational transactions in the business of the Company. Hence, due to an inadvertent error GASPL was disclosed as public shareholder of KDML from June 2017 to September 2023 instead of part of ‘promoter group’ entity.

*It is submitted that the base of operations of the Company is in Surat and there is limited availability of experienced and competent professionals. Looking into the small size of the Company and limited opportunities for professional growth, the Company had a high attrition for the position of Company Secretary. There were frequent changes in the holder of the position of ‘Company Secretary’ of the Company, details of which are provided below:*

<b>Name</b>	<b>Date of appointment</b>	<b>Date of resignation</b>
<i>Shilpa Mittal</i>	<i>02/01/2016</i>	<i>05/05/2016</i>
<i>Nilesh Kalsariya</i>	<i>05/05/2016</i>	<i>23/03/2017</i>
<i>Chinmay Methiwal</i>	<i>15/05/2017</i>	<i>19/07/2018</i>
<i>Rekha Naraniwal</i>	<i>20/10/2018</i>	<i>24/09/2020</i>

Vaishali Punjabi	25/09/2020	31/01/2024
Meghavi Gonawala	01/02/2024	Till present

*It is submitted that such non stability in the position of the Company Secretary from 2016 till 2020 and lack of adequate professional advice and guidance has resulted in non-clarity to the promoters regarding the definition of the term 'Promoter Group' and non-inclusion of GASPL in the same.*

*It is submitted that GASPL is part of 'Promoter Group' which was correctly disclosed in the Letter of Offer dated February 05, 2024 as filed with SEBI and also disclosed in the shareholding filings dated April 20, 2024 made on the Stock Exchanges.*

#### **Observation at Serial No.7,8,9,10&11 of the SCN**

**Observation/s:** *BSAS, ONYX and Vijaykumar Khemani HUF not shown as Promoter Group entity during 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22*

**Reply:** *On behalf of our clients it is herewith submitted that the Noticees agree that BSAS Infotech Ltd. (BSAS), ONYX Partners (ONYX) and Vijaykumar Khemani HUF form part of the promoter group of KDML and that there was an inter-se transfer of shares to them from Vijay Kumar Khemani and Amit V. Khemani, being the promoters to the above-mentioned entities (BSAS and ONYX) on January 01, 2018 and it is admitted that inadvertently none of them were shown as part of promoter group in the shareholding pattern filed for half-year ended March 2018 and their shareholding was disclosed under public shareholding in the stock exchange filings made on April 20, 2018. It is further submitted that BSAS and Vijaykumar Khemani HUF had sold their entire shareholding in July 2018 and September 2018 respectively and only ONYX continued to hold shares of KDML and the Company after realising its mistake had shown them as promoter group entities in the stock exchange filing made for the half year ended March 31, 2020. The Company has disclosed their status correctly in the Letter of Offer dated February 05, 2024 filed with SEBI.*

#### **Observation at Serial No.12 of SCN)**

**Observation:** *Number of shares held by Onyx in KDML were incorrectly disclosed in the Shareholding Pattern (SHP)*

**Reply:** *On behalf of our clients it is herewith submitted that due to an inadvertent error Onyx shareholding which was 4,05,600 shares was disclosed as 3,91,213 shares in the share holding pattern for the period ended March 31, 2020 as filed with the stock exchanges.*

#### **Observation at Serial No. 13 of SCN**

**Observation:** *The company for the first time disclosed BSAS as promoter group in the shareholding of September 2020 but omitted the name of ONYX from the promoter group, despite ONYX holding (4,05,600 i.e., 3.53%) shares of the company. This continued till March 2022.*

**Reply:** On behalf of our clients, it is hereby admitted that the Company only disclosed BSAS as promoter group entity in September 2020 filing which was pursuant to the inter-se transfer of 4,99,800 shares between Vijaykumar Khemani and BSAS. Further as already admitted under reply to the observation number 'B' Onyx was only shown as a promoter group entity in March 2022.

**Observation at Serial No. 14 of SCN**

**Observation:** Mr. Vijaykumar Khemani is appearing twice in the shareholding pattern under two different categories i.e., as promoter and as promoter group also

**Reply:** On behalf of our clients, it is hereby submitted that Mr. Vijaykumar Khemani holds 53,76,600 no. of shares in his own name and Onyx partners which is a partnership firm wherein Vijaykumar Khemani is one of the partners holds 4,05,600 shares. Accordingly, his name is disclosed twice in the shareholding pattern for the period ended September 2020, March 2021, September 2021, March 2022 i.e. once as a promoter and another as promoter group (representative capacity of the partnership firm).

**Observation at Serial No.15, 16 & 17 SCN**

On behalf of our clients, it is hereby admitted that there have been inadvertent omissions and mistakes by the Company in disclosing the Share Holding Pattern and disclosing the promoter group entities to the stock exchanges as per the observations made above.

**Delayed public announcement to make an open offer**

**By GASPL**

**Observation at Serial No.18 of SCN**

**Reply:** On behalf of our Client, it is hereby submitted and admitted that GASPL had acquired 20,00,400 no. of shares amounting to 17.41% of KDML Shares on June 30, 2017 and the acquisition was more than the creeping acquisition limit of 5% as stipulated under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('SAST'). However, as already admitted under point number A above (under the heading 'Wrong Shareholding Pattern'), Company had not considered GASPL as promoter group by inadvertent error and as such the open offer as required to be made under SAST was not made. In January 2021, GASPL had acquired 3.82% of KDML shares whereas other promoters had already acquired 4.35% of shares, thereby exceeding the creeping acquisition limit of 5%.

As already admitted above Company has disclosed the correct status in Letter of Offer dated February 5, 2024 as filed with SEBI.

**By Other Promoters/Promoter Group Observation at Serial No. 19 of SCN**

**Observation:** Delayed Open Offer by BSAS, ONYX and Vijaykumar Khemani HUF.

**Reply:** On behalf of our clients, it is hereby submitted and admitted that BSAS, ONYX and Vijaykumar Khemani HUF acquired 9,60,000 (8.36%), 16,02,000 (13.95%) and 5,82,000 (5.07%) shares respectively on January 01, 2018 by way of transfer from Vijay K. Khemani and Amit V. Khemani. As Company had inadvertently not considered BSAS, ONYX and Vijaykumar Khemani HUF as part of promoter group till then, it did not realise the breach of the limit of 5% and hence the requirement of open offer was not complied with.

The status of compliances was not ascertainable and therefore, considering the same as non compliance, the Acquirer, alongwith the promoter group, at the time of filing of the letter of offer, had undertaken disclosure compliances and submitted the requisite disclosures under Regulation 29(2) and Regulation 30 of the SEBI SAST Regulations. Post such submissions, the Acquirer and PACs are now in compliance with the disclosure requirements under the SEBI SAST Regulations.

**Observation at Serial No. 20 of SCN**

**Observation:** Delayed public announcement to make an open offer by Vijay K Khemani

On behalf of our clients, it is hereby submitted and admitted that Vijay K Khemani (Acquirer) acquired 4,99,200 (2.17%) shares on June 30, 2023, which led to his shareholding increasing to 59,10,000 (25.72%) shares. It was an inadvertent mistake on part of the Acquirer that he did not realise the breach of the limit as per Regulation 3(3) of the SAST and failed to make an Open Offer.

**Observation at Serial No. 21 and 22 of SCN**

**Observation:** The letter of offer filed on February 5, 2024 had made the aforesaid disclosures and had taken into consideration the aforesaid three transactions (as per observations 18, 19 and 20) that had triggered the Open Offer requirement, by calculating the price of Open Offer assuming the triggering point as per the respective acquisition date of shares and control of KDML being the target company.

**Reply:** On behalf of our clients, it is hereby submitted that there has been inadvertent non-compliance with the Open Offer obligations under SAST as per the earlier replies as submitted above.

We further submit that the Acquirer and PACs have complied, though belatedly, with the requirement of giving open offer for such trigger in the past, alongwith interest at the rate of 10% p.a., summarised details of which are as under:

<b>Particulars</b>	<b>Details as of August 09, 2023</b>	<b>Details as of January 01, 2018</b>	<b>Details as of June 30, 2023</b>	<b>Details as of June 30, 2017</b>	<b>January 13, 2021</b>
<i>Date on which transaction undertaken which triggered the open offer requirement</i>	<i>August 09, 2023</i>	<i>January 01, 2018</i>	<i>June 30, 2023</i>	<i>June 30, 2017</i>	<i>January 13, 2021</i>
<i>Period which would be considered to determine whether equity shares of the target Company are frequently traded or not</i>	<i>August 01, 2022 to July 31, 2023</i>	<i>January 01, 2017 to December 31, 2017</i>	<i>June 01, 2022 to May 31, 2023</i>	<i>June 01, 2016 to May 31, 2017</i>	<i>January 01, 2020 to December 31, 2020</i>
<i>No. of equity shares traded during the abovementioned period</i>	<i>15,07,200</i>	<i>30,51,600</i>	<i>11,18,400</i>	<i>9,33,600</i>	<i>38,11,200</i>
<i>No. of shares outstanding as on the respective date</i>	<i>2,29,74,000</i>	<i>1,14,87,000 *</i>	<i>2,29,74,000</i>	<i>1,14,87,000</i>	<i>1,69,62,994</i>
<i>%age of then paid up share capital</i>	<i>6.56</i>	<i>26.57</i>	<i>4.87</i>	<i>8.13</i>	<i>22.47</i>
<i>Annualized trading turnover (as % of then paid up and voting share capital</i>	<i>6.56</i>	<i>26.57</i>	<i>4.87</i>	<i>8.13</i>	<i>22.47</i>
<i>Whether Equity Shares of the Target Company are frequently traded</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>No</i>	<i>Yes</i>
<i>Offer price in terms of Regulation 8(2) of the SEBI SAST Regulations</i>	<i>Rs. 26.50</i>	<i>Rs. 97.50 #</i>	<i>Rs. 24.32</i>	<i>Rs. 56.50#</i>	<i>Rs. 80.00</i>
<i>Offer Price calculated in terms of Regulation 8(2) of the SEBI SAST Regulations including interest for the period of delay</i>	<i>NA</i>	<i>Rs. 155.67#</i>	<i>Rs. 25.48</i>	<i>Rs. 93.09</i>	<i>Rs. 119.16</i>

*\* Prior to issue of bonus equity shares by the Target Company*

*# The above share price has been adjusted for the allotment of bonus shares in the ratio of 1:1 on October 09, 2020*

*Rs. 155.67 (Rupees One Hundred Fifty-Five and paise Sixty-Seven only), being the highest of the price determined for the three dates as mentioned above has been offered to the shareholders of the Company as "Offer Price" under the SEBI SAST Regulations, in order to meet compliance of the Breach of SAST Limit 1, Breach of SAST Limit 2, Breach of SAST Limit 3 and Breach of SAST Limit 4 too. (for defined terms, please refer to the Letter of Offer)*

*The aforesaid calculation of interest as provided in the Letter of Offer has been accepted by SEBI by clearance of the Letter of Offer and the transaction of Open Offer having been*

*closed. It is therefore requested that a lenient view on the matter may be taken as the Acquirer has also compensated the interest for the period of delay.*

***Further Submissions: In view of the aforesaid facts, we make further submissions as under:***

***Acknowledgement of Non-Compliance***

*We acknowledge that the discrepancies highlighted in the SCN, particularly in the disclosure of shareholding patterns and delayed Open Offer announcements, are factual. We recognize that there were several inadvertent errors in the disclosures and categorization of certain promoter group entities, including GASPL, BSAS, ONYX, and Vijaykumar Khemani HUF, as public shareholders rather than as part of the promoter group. Additionally, we understand the responsibility to make timely Open Offer announcements when the shareholding exceeded the regulatory thresholds.*

***Corrective Actions Taken and Planned***

*In light of the issues raised by SEBI, KDML has taken immediate steps to rectify the non-compliance and ensure that such errors are not repeated in the future. These steps include:*

***Rectification of Shareholding Patterns:***

*KDML has corrected the errors in the classification of promoter group entities and has updated the shareholding patterns accordingly. This includes reclassifying GASPL, BSAS, ONYX and Vijaykumar Khemani HUF as part of the promoter group for the periods from June 2017 to September 2023, in line with Regulation 2(1)(pp) of SEBI ICDR Regulations. We are also in the process of correcting the shareholding patterns filed for the previous periods.*

***Enhanced Internal Controls for Disclosure Compliance:***

*KDML has strengthened its internal processes and controls to ensure that disclosures are made correctly and on time, particularly with respect to the SEBI LODR and SAST Regulations. A dedicated compliance team shall be appointed to regularly review the Company's filings and shareholding patterns to avoid any future misclassification or delays in filing.*

***Future Open Offer Compliance:***

*KDML has reviewed the acquisitions that triggered the Open Offer requirement under the SAST Regulations and is taking steps to ensure that any future transactions triggering these thresholds will be appropriately disclosed, and timely Open Offers will be made in full compliance with SEBI's requirements.*

## **Commitment to Compliance**

*KDML undertakes that it shall take its regulatory obligations seriously, and shall be committed to full compliance with all SEBI regulations. The errors in disclosure and Open Offer compliance were unintentional and due to lack of professional advice in the past, which are regretted deeply. Moving forward, KDML shall be implementing the following additional measures:*

*Training and Development: KDML shall ensure that the Company Secretaries undergo training programs conducted by their parent institute ("ICSI") on routine basis to ensure thorough understanding and execution of regulatory requirements.*

*Periodic Audits: KDML shall be conducting regular internal audits of its regulatory filings to ensure that all disclosures, including shareholding patterns, SEBI LODR and SAST Regulations disclosures and Open Offer requirements, are being met accurately and in a timely manner.*

## **Request for Leniency**

*It is submitted that these errors were unintentional and corrective steps have been taken by our Company, including payment of interest for the period of delay in giving the Open Offer. We respectfully request SEBI to consider the above submissions and the commitment of KDML and other PACs to prevent future non-compliances. It may please be noted that Noticee Nos. 1-6 are wishing to avail the settlement mechanism as provided under SEBI (Settlement Proceedings) Regulations, 2018.*

*We therefore request that no penalties may please be imposed on the Noticees, taking into consideration the swift corrective measures and their sincere efforts to comply with the regulatory framework moving forward.*

.....'

## **Letter dated October 23, 2024:**

.....

1. Noticees referred following judgments:
  - i. *In the Hon'ble Securities Appellate Tribunal, Mumbai, Appeal No. 39/2002 in the matter of Reliance Industries Limited V/s Securities and Exchange Board of India*
  - ii. *In the Hon'ble Supreme Court of India (AIR 1970, SC 253) in the matter of Hindustan Steel Ltd. V/s State of Orissa*
  - iii. *In the Hon'ble Securities Appellate Tribunal, Mumbai, Appeal No. 24/2000 in the matter of M/s. Cabot International Capital Corporation V/s Securities & Exchange Board of India*
  - iv. *In the Hon'ble Securities Appellate Tribunal, Mumbai in the matter of Kensigton Investment Ltd. V/s Securities & Exchange Board of India*
  - v. *Bajrang Oils Mills V/s Income Tax Officer (2007) 295 ITR 314 (Raj)*
  - vi. *In the Hon'ble Supreme Court of India (AIR 1987 SC 2386) in the matter of Ranjit Thakur V/s Union of India*
  - vii. *In the Hon'ble Supreme Court of India (AIR 1983 SC 454) in the matter of Bhagat Ram V/s State of Himachal Pradesh*



2. In view of the aforesaid judgements and orders and the present circumstances of the case that there has been no unfair advantage or gain to the Noticees and no loss has been caused to an investor or group of investors, it is hereby submitted and requested on behalf of the Noticees that the Ld. Adjudicating Officer may be lenient and may not impose any penalties on the Noticees.

3. It is further submitted that KDML was a newly listed entity. It was only in March 2016 that KDML got listed. The young Company Secretary/s did not fully comprehend the technical requirements of SAST Regulations and failed to comply with them whereas the promoters depended upon her/him for the said compliances. When we employ an expert to do a certain job, we assume that the job is being done well. In many cases the principle that a client should not suffer for the mistakes committed by his lawyers has been upheld. Similarly, here the Promoters and Promoter Group members, who did not have the relevant experience, should not be penalised for this over-sight or non-compliance committed by the Company Secretary/s.

4. It would be appreciated by the Ld. Adjudicating Officer that the SAST Regulations and the ICDR Regulations are undoubtedly the most technical regulations and they are very often subject to erroneous interpretation. This is what appears to have happened here, where the Company Secretary and Compliance Officer failed to file the relevant disclosures.

5. The Ld. Adjudicating Officer has authority not only to issue a SCN for adjudicating penalty for every violation or non-compliance but also has power to impose nominal penalties if she deems that the intention was not wrong/mala fide and only a proper message of compliance has to be sent across the securities market. In this context SAT judgement in the matter of **Dr. (Mrs.) Renuka Datla Vs. SEBI** is referred.

6. At the cost of repetition, it is hereby submitted that the lapses and errors as referred to in the SCN were unintentional and corrective steps have been taken by the Noticees, including payment of interest for the period of delay in giving the Open Offer and that a lenient view may be taken by SEBI in deciding the matter.

.....,

9. I now proceed to examine the case based on the facts and circumstances and the material available on record.

### **CONSIDERATION OF ISSUES AND EVIDENCE**

10. I have carefully perused the allegations levelled against the Noticees in the SCN, their replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination: -

- I. Whether the Noticees has violated the provisions of the Act, Regulations and Circulars as indicated at Para 1?
  - II. Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 15A(b) and 15H(ii) of the SEBI Act?
  - III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15-J of the SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules?
11. Before proceeding with the matter on merits, it would be relevant to reproduce the provisions of law:

**SEBI LODR Regulations**

**Holding of specified securities and shareholding pattern.**

**31.(1)** The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to time within the following timelines –

(a).....

(b) on a quarterly basis, within twenty one days from the end of each quarter; and, .....

**SEBI circular no. CIR/CFD/CMD/13/2015 dated November 30, 2015**

**Disclosure of holding of specified securities and Holding of specified securities in dematerialized form**

**2. Manner of representation of holding of specified securities**

**“a.** The holding of specified securities shall be divided into the following 3 categories viz. Promoter and Promoter Group, Public and Non Promoter Non Public.....

.....**Formats:** The format for disclosure of holding of specified securities is placed at Annexure I. ....**b.** Statement showing holding of specified securities of the Promoter and Promoter Group is given as per Table-II...”

**SEBI SAST Regulations**

**CHAPTER –II**

**SUBSTANTIAL ACQUISITION OF SHARES, VOTING RIGHTS OR CONTROL**

**Substantial acquisition of shares or voting rights.**

**3. (1).....**

**(2)** No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

**(3)** For the purposes of sub-regulation (1) and sub-regulation(2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.

Acquisition of control.

**4.** Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

Timing.

**13 (1)** The public announcement referred to in regulation 3 and regulation 4 shall be made in accordance with regulation 14 and regulation 15, on the date of agreeing to acquire shares or voting rights in, or control over the target company.

Obligations of the Acquirer

**25 (1) ...**

**(5)** The acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfilment of applicable obligations under these regulations.

**Issue I - Whether the Noticees have violated the provisions of the Act, Regulations and Circulars as indicated at Para 1?**

12. Based on perusal of the material available on record, submissions of the Noticees and giving regard to the facts and circumstances of the case, I record my findings hereunder:
13. The key allegations in the SCN against the Noticees pertain to incorrect classification of promoter group entities, failure to make timely open offer announcements, and other disclosure lapses under the LODR Regulations and the SAST Regulations.

*Incorrect Classification of promoter/promoter group entities under public category, thereby filing wrong disclosures of Shareholding pattern –*

14. The SCN alleges that GASPL was incorrectly classified as a public shareholder instead of being disclosed as part of the Promoter Group of KDML from June 2017 to September 2023. Additionally, SAS, ONYX, and Vijaykumar Khemani HUF were not disclosed as Promoter Group entities in the shareholding pattern for five consecutive financial years (2017-18 to 2021-22) despite being covered under the regulatory definition of a Promoter Group. Consequently, Noticee 1 allegedly disseminated misleading shareholding disclosures to the stock exchanges for these periods, violating Regulation 31(1)(b) of SEBI (LODR) Regulations, 2015, read with SEBI Circular No. CIR/CFD/CMD/13/2015 dated November 30, 2015.
15. In response, the Noticees have admitted the wrong classification of Promoter Group entities in their disclosures and have attributed these lapses to frequent attrition in the Company Secretary position and hence lack of professional guidance. They contend that the errors were inadvertent and that the company rectified the wrong classification in subsequent filings. Specifically, they point out that GASPL's status was corrected in the Letter of Offer dated February 5, 2024, and SAS, ONYX, and Vijaykumar Khemani HUF were eventually disclosed as

Promoter Group entities in later shareholding patterns. Additionally, the Noticees argue that they relied on Company Secretaries for compliance matters, but due to frequent changes in this position, they lacked consistent professional expertise, leading to the alleged lapses.

16. A careful examination of the facts establishes that GASPL was incorrectly classified as a public shareholder for more than six years. Similarly, BSAS, ONYX, and Vijaykumar Khemani HUF were omitted from Promoter Group disclosures for several financial years, despite their shareholding structure and inter-se transfers from promoters making them clearly fall under the definition of Promoter Group. The failure to disclose these entities correctly resulted in a distorted and misleading representation of the company's shareholding structure.
17. The contention of the Noticees that the Noticees lacked professional expertise and relied on Company Secretaries for regulatory compliance is not tenable. The statutory responsibility to ensure accurate disclosures under SEBI regulations is primarily with Noticee 1, as a listed entity. While the services of a Company Secretary may be availed to assist in compliance matters, the ultimate obligation to make truthful and accurate filings with the stock exchanges rests on Noticee 1. Frequent changes in the position of Company Secretary cannot absolve Noticee 1 of its duty to ensure continuity and accuracy in regulatory compliances. The prolonged period of wrong classification indicates a systemic failure in compliance and internal oversight mechanisms, rather than a mere consequence of employee attrition. Furthermore, while the Noticees claim to have corrected these discrepancies in later filings, such *post facto* corrections do not negate the non-compliance that persisted for several years. The repeated wrong classifications undermine market integrity, impair investor confidence, and raise serious concerns about the robustness of the company's internal compliance mechanisms.

18. In view of the above findings, it is established that Noticee 1 disseminated incorrect and misleading shareholding disclosures to the stock exchanges over the specified periods, and therefore is in violation of **Regulation 31(1)(b) of SEBI (LODR) Regulations, 2015, read with SEBI Circular No. CIR/CFD/CMD/13/2015 dated November 30, 2015.**

*Delayed public announcement to make Open Offer*

19. It is noted from the SCN that the following transactions by the Noticees, triggered the requirements to make open offer:

<b>Date</b>	<b>Transaction Details</b>	<b>Reason for Open Offer Trigger</b>
June 30, 2017	GASPL acquired 20,00,400 shares (17.41%) from the open market	Exceeded the 5% creeping acquisition limit under Regulation 3(2) of SEBI SAST Regulations, 2011, triggering an open offer.
January 1, 2018	Inter-se transfer of 31,44,000 shares between Promoters and Promoter Group: - Vijay K Khemani: Decrease of 17,76,000 shares (15.76%) - Amit V Khemani: Decrease of 13,68,000 shares (11.91%) - Vijay K Mangturam Khemani HUF: Increase of 5,82,000 shares (5.07%) - BSAS Infotech Ltd.: Increase of 9,60,000 shares (8.36%) - ONYX Partners: Increase of 16,02,000 shares (13.95%)	The inter-se transfer was not exempted under Regulation 10 of SEBI SAST Regulations. The acquisition exceeded the 5% creeping acquisition limit, triggering an open offer under Regulation 3(2) read with Regulation 4 of SEBI SAST Regulations, 2011.
January 13, 2021	GASPL acquired 8,77,200 shares (3.82%) from the open market, while other promoters had already acquired 4.35% during 2020-21.	The cumulative acquisition by promoters and promoter group exceeded 5%, breaching the creeping acquisition limit under Regulation 3(2) of SEBI SAST

		Regulations, 2011, requiring an open offer.
June 30, 2023	Vijay K Khemani acquired 4,99,200 shares (2.17%) from the open market, increasing his individual holding from 23.55% to 25.72%	As his individual shareholding exceeded 25%, this triggered an open offer requirement under Regulation 3(3) of SEBI SAST Regulations, 2011.

20. The acquirers and PACs did not make timely public announcements despite open offer provisions being triggered on the dates of the transactions as mentioned in the above table. The Letter of Offer dated February 5, 2024 retrospectively accounted for these past transactions while calculating the open offer price. Consequently, the acquirers/PACs were alleged to be in violation of Regulation 13 and 25(5) read with Regulations 3(2), 3(3), and 4 of SAST Regulations due to delayed compliance with open offer obligations.
21. The failure to make timely open offer announcements represents a serious regulatory lapse under the SAST Regulations. I note that GASPL's acquisitions in June 30, 2017 (17.41%) and January 13, 2021 (3.82%) exceeded the 5% creeping acquisition limit, thereby triggering an open offer obligation under Regulation 3(2) read with Regulation 4 of SAST Regulations. I note that the Noticees have admitted non-compliance but contended that they were unaware of the requirement due to their wrong classification of GASPL as a public shareholder.
22. However, lack of knowledge of regulatory requirements is not a valid excuse for non-compliance. The SAST framework imposes strict and objective obligations on acquirers, and it is the duty of a listed company to ensure compliance with regulations, irrespective of its internal wrong classifications or lack of expertise. The delayed compliance in February 2024, amounting to a delay of 2,413 days (6 years, 7 months, 3 days) for the June 2017 transaction and 1,113 days (3 years,

20 days) for the January 2021 transaction, does not mitigate the prolonged non-compliance, as investors were deprived of their statutory rights for several years, affecting their ability to make informed decisions.

23. A similar regulatory breach occurred in January 1, 2018, when BSAS, ONYX, and Vijaykumar Khemani HUF acquired shares through inter-se transfers, causing the collective promoter shareholding to exceed the 5% threshold. The Noticees contended that they were unaware of the threshold breach, but I note that as promoters of a listed entity, they are expected to have full knowledge of regulatory obligations under SEBI Regulations. The failure to announce an open offer at the time of acquisition resulted in the suppression of material information from the market, depriving public shareholders of the exit opportunity mandated under the law. The open offer for this transaction was delayed by 2,220 days (6 years, 1 month, 1 day). Recurrent violations of this nature demonstrate a lack of internal compliance mechanisms rather than an isolated oversight.
24. Additionally, Vijay Kumar Khemani's acquisition of 4,99,200 shares (2.17%) on June 30, 2023, increased his individual shareholding beyond 25%, thereby triggering an open offer obligation under SAST Regulations.
25. The Noticees have admitted the lapse and termed them inadvertent. However, a listed company must ensure regulatory compliance regardless of individual errors or internal mismanagement. The contention of the Noticees that the frequent change of Company Secretaries led to compliance lapses is untenable, as the ultimate responsibility for ensuring compliance with SEBI regulations rests with the company itself. Similarly, incorrect classification of promoters cannot justify the failure to meet open offer obligations. The failure to comply with Regulation 3(3) of SAST Regulations, 2011 represents a significant regulatory lapse, directly



impacting investor exit rights and market transparency. The open offer for this transaction was delayed by 217 days (7 months, 3 days).

26. The failure to make timely public announcements for open offer obligations constitutes violation of Regulations 13 and 25(5) read with Regulations 3(2), 3(3), and 4 of SEBI SAST Regulations, 2011. Regulation 13 mandates that an acquirer must make a public announcement of an open offer on the same day as the share acquisition that triggers the obligation. Regulation 25(5) requires the acquirer and persons acting in concert (PACs) to ensure compliance with open offer obligations before assuming control of the target company. By failing to announce the open offer at the time of the triggering transactions, the Noticees delayed compliance for several years, thereby depriving shareholders of their exit rights and violating the fundamental objective of SEBI's regulations.
27. The repeated non-compliance with Regulations 3(2) and 3(3) of SAST Regulations demonstrates a pattern of regulatory disregard rather than an inadvertent lapse. The failure to make timely open offers resulted in prolonged non-disclosure of material transactions, impacting investor protection and market integrity.
28. In view of the above, **Noticee 2, 3, 4, 5 and 6 (acquirers/PACs) are in violation with Regulation 13 and 25(5) read with Regulation 3(2), 3(3) and 4 of SEBI SAST Regulation, 2011.**

***Issue II. Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 15A(b) and 15H(ii) of the SEBI Act?***

29. In the light of findings and observations made against the Noticees brought out in the foregoing paragraphs, following violations have been established:

- a) Noticee 1 violated Regulation 31(1)(b) of SEBI (LODR) Regulations 2015 read with SEBI circular no. CIR/CFD/CMD/13/2015 dated November 30, 2015
  - b) Noticee 2, 3, 4, 5, 6 violated Regulation 13 and 25(5) read with Regulation 3(2), 3(3) and 4 of SEBI SAST Regulation, 2011.
30. The aforesaid violations, makes Noticee 1 liable for penalty under Section 15A(b) of the SEBI Act and Noticees 2, 3, 4, 5, 6 liable for penalty under Section 15H(ii) of the SEBI Act.
31. The Noticees have sought leniency by citing multiple precedents where penalties were waived for technical lapses. They emphasized that there was no malafide intent, no harm to investors, and that they have included interest for the delay in their open offer. While intent is a relevant factor, SEBI's regulatory framework prioritizes market transparency and investor protection. The prolonged period of non-compliance and the extent of misrepresentation weigh against treating these violations as mere technical lapses, hence the judgments referred by the Noticees are not applicable in the instant matter. Furthermore, the corrective actions, though necessary, do not erase the long period of non-compliance.
32. In this context, I would also like to refer to the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund wherein Hon'ble Supreme Court of India 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. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not."*

33. The text of the above referred Section 15A(b) of SEBI Act is reproduced herein below:

**SEBI Act:**

***Penalty for failure to furnish information, return, etc.***

**15A.** *If any person, who is required under this Act or any rules or regulations made thereunder,—*

*(a).....*

*(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;*

***Penalty for non-disclosure of acquisition of shares and takeovers.***

**15H.** *If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*

*(i).....*

*(ii) make a public announcement to acquire shares at a minimum price; or*

*”””*

*he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

**Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15-J of the SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules?**

34. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act, which reads as under: -

**SEBI Act**

***Factors to be taken into account while adjudging quantum of penalty***

**15J.** While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —  
the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

the amount of loss caused to an investor or group of investors as a result of the default;  
the repetitive nature of the default.

[Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

35. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of non-compliance to the provisions is not available. I note that the Noticees has placed on records, wherein it has showcased that correctional measures have been taken and while making open offer past transactions, and the interest for the delayed period have been considered. The violations are established, however the efforts undertaken by the Noticee, and the circumstances illustrated by the Noticees are considered as mitigating factors. Since, the Noticees are found to be in non-compliance of regulatory requirements, therefore, monetary penalty is imposed on the Noticees as effective deterrence.

## ORDER

36. Considering all the facts and circumstances of the case including the submissions of the Noticees and exercising the powers conferred upon me under section 15-I of SEBI Act read with Rule 5 of the SEBI Adjudication Rules, I hereby impose the following monetary penalty under SEBI Act on the Noticees:

Sr. No.	Name of the Noticee	Penalty Provisions	Amount of penalty (in ₹)
1	M/s. Khemani Distributors and Marketing Limited	Section 15A(b) of SEBI Act	₹ 10,00,000/- (Rupees Ten Lakhs only)

Sr. No.	Name of the Noticee	Penalty Provisions	Amount of penalty (in ₹)
2	M/s. Gryffin Advisory Services Private Limited	Section 15H(ii) of SEBI Act	₹ 10,00,000/- (Rupees Ten Lakhs only) (Jointly and Severally on Noticee 2, 3, 4, 5, 6)
3	M/s. BSAS Infotech Limited		
4	ONYX Partners		
5	Vijaykumar Mangturam Khemani HUF		
6	Vijaykumar Khemani		

In my view, the said penalty is commensurate with the violations committed by the Noticees in this case.

37. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link:  
**ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW**
38. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
39. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticees and also to the SEBI.

**Place: Mumbai**

**Date: March 11, 2025**

**ASHA SHETTY**

**ADJUDICATING OFFICER**