WTM/MPB/IVD/ ID-1/140/2020

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11, 11(4), 11B(1), 11B(2) and 11(4A) of the 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 Re: Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992

In respect of

SCN No. SEBI/HO/IVD/ID1/OW/P/2019/32972/1 dated December 10, 2019 – SCN
SSCN No. SEBI/HO/IVD/ID1/OW/P/2020/12205/1 dated July 24, 2020 – SSCN

Sr. No.	Noticee No in Order	Noticee No in SCN	Entities Name	PAN
1	Noticee No. 1	Noticee No. 1	Sanjay Kirloskar, Trustee of Kirloskar Brothers Ltd. Employees Welfare Trust Scheme	Sanjay – ABDPK5775F Trust – AABTK2285L
2	Noticee No. 2	Noticee No. 2	Pratima Sanjay Kirloskar	ABAPK7978E
3	Noticee No. 3	Noticee No. 3	Prakar Investments Pvt. Ltd.	AABCP1268P
4	Noticee No. 4	Noticee No. 4	Karad Projects and Motors Ltd.	AADCA9556F

In the matter of Kirloskar Brothers Limited

BACKGROUND

1. Kirloskar Brothers Limited (hereinafter referred to as **'KBL'/ 'Company'**) was incorporated on January 15, 1920 and registered with Registrar of Companies, Pune. KBL is listed on Bombay Stock Exchange Limited (hereinafter referred to as **'BSE'**) and National Stock Exchange Limited (hereinafter referred to as **"NSE**)".

2. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) received various complaints alleging insider trading and bad corporate governance practices in KBL. Pursuant to the receipt of complaints, SEBI conducted investigation during the period from March 1, 2010 to April 30, 2011 (hereinafter referred as **"investigation period"**) into the matter relating to dealings in the scrip of KBL to ascertain possible violation of the provisions of SEBI Act, 1992, SEBI (Prohibition Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT Regulations, 1992"**) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**).

3. Investigation revealed that during the investigation period, (1) promoters and directors of KBL had traded in scrip of KBL while in possession of unpublished price sensitive information (hereinafter referred to as **"UPSI"**) and made wrongful gains by avoiding losses; and (2) promoters and directors of KBL had submitted incorrect undertaking / declaration to KBL.

SHOW CAUSE NOTICE

4. Thereafter, a Common Show Cause Notice dated December 10, 2019 (hereinafter referred to as **'SCN'**) was issued to Sanjay Kirloskar, Trustee of Kirloskar Brothers Ltd. Employees Welfare Trust Scheme (hereinafter referred to as **"Noticee No. 1"**), Pratima Sanjay Kirloskar (hereinafter referred to as **"Noticee No. 2" / "Pratima"**), Prakar Investments Private Limited (hereinafter referred to as **"Noticee No. 3" / "PIPL"**) and Karad Projects and Motors Limited (Formerly Hematic Motors Private Limited) (hereinafter referred to as **"Noticee No. 4" / "Karad"**) and a common Supplementary Show Cause Notice dated July 24, 2020 (hereinafter referred to as **'SSCN'**) was issued to Noticee No. 1 to 4 in the matter of KBL to show cause as to why:

   4.1. appropriate penalty and directions including disgorgement of the loss avoided by Noticee No. 2 & 4 while trading in the shares of KBL, be not issued against Noticee No. 1 to 4 under sections 11(1), 11(4), 11B(1), 11B(2) read with 15G and 11(4A) of SEBI Act, 1992 read with Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"AO Rules"**) for the alleged violation of Section 12A(d) and (e) of SEBI Act, 1992, Regulation 3(i) read

with Regulation 2(ha) of PIT Regulations, 1992 read with Regulation 12 of SEBI (Prohibition Insider Trading) Regulations, 2015 (hereinafter referred to as **"PIT Regulations, 2015"**) for trading in the shares of KBL while in possession of UPSI by Noticee No. 1 to 4;

4.2. appropriate penalty be not levied against Noticee No. 1, and 2 under sections 11B(2) read with 15HB and 11(4A) of SEBI Act, 1992 read with Rule 4(1) of AO Rules for the alleged violation of Part A, of clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of SEBI PIT Regulations 1992 by Noticee No. 1 and 2.

5. The observation and allegation mentioned in the SCN and SSCN (hereinafter collectively referred to as **"SCNs"**) against Noticee No. 1 to 4 (hereinafter collectively referred to as **"Noticees"**) are as under:

5.1. **Management of KBL**: During the investigation period, it is noted that alongwith other directors of KBL as mentioned in the SCNs, Sanjay Chandrakant Kirloskar (hereinafter referred to as **"Sanjay"**) was also a Director of KBL.

5.2. **Financial Performance of KBL:**

5.2.1. The profit and loss of KBL for the quarters ending June 2009 to March 2011 and Financial Years (FY) 2008-09 to 2010-11 are as under:

Table No. 1: **Quarterly results**

Amount in Rs. Cr.

Description	**Jun- 09**	**Sep- 09**	**Dec- 09**	**Mar- 10**	**Jun- 10**	**Sep- 10**	**Dec- 10**	**Mar- 11**
Operating income	402.65	552.64	442.12	633.65	389.57	447.93	388.43	722.31
Other Income	3.07	3.30	0.22	28.13	1.66	1.70	1.63	1.71
Total income	405.72	555.94	442.34	661.78	391.23	449.64	390.06	724.02
Expenditure	-382.70	-489.33	-398.33	-562.42	-370.26	-406.04	-349.32	-666.28
Profit after tax (PAT)	**5.60**	**33.14**	**20.34**	**58.44**	**4.45**	**19.49**	**16.89**	**20.53**

Table No. 2: **Yearly results**

			Amount in Rs. Cr.
Description	**FY 2009**	**FY 2010**	**FY 2011**
Operating income	1836.40	2027.00	1946.90
Other Income	43.60	46.10	12.90
Total income	1880.00	2073.10	1959.80
Expenditure	1781.80	1900.10	1857.00
Profit after tax (PAT)	**67.00**	**117.50**	**61.40**

5.2.2. From the above table, it is observed that for the quarter ended September 2010, Profit After Tax (PAT) reduced to Rs.19.49 crore from Rs.33.14 crore in comparison to previous year quarter ended September 2009. Similarly, for the quarter ended June 2010, PAT reduced to Rs.4.45 crore from Rs.5.60 crore in the previous year quarter ended June 2009. Further, FY 2010-11, PAT has been reduced to Rs. 61.40 crore from Rs. 117.50 crore for FY 2009-10.

5.3. **Corporate Announcements:**

5.3.1. During the investigation period, certain corporate announcements were made by KBL. Some of the important corporate announcements made by KBL during the investigation period are as follows:

5.3.1.1. The financial results for the quarter July-September, 2010 was published on October 28, 2010 at 13:50 Hrs on BSE and at 16:10 Hrs on NSE. The impact of the financial results on price of KBL is as under

5.3.1.1.1. On BSE, the price of scrip decreased by 3.73% and 2.54% from Oct 27 to Oct 28 to Oct 29, 2010 respectively. For the same time the trading volume Increased by 142.30% and decreased by 72.12% from Oct 27 to Oct 28 to Oct 29, 2010 respectively.

5.3.1.1.2. On NSE, the price of scrip decreased by 1.95% and 1.92% from Oct 27 to Oct 28 to Oct 29, 2010 respectively. For the same time the trading volume Increased by 265.93% and decreased by 38.52% from Oct 27, to Oct 28 to Oct 29, 2010 respectively

5.3.1.2. The financial results for the quarter and year ended on March 31, 2011, in which advances given to Kirloskar Construction and Engineers Ltd. (herein after referred to as **"KCEL"**) was written-off (capital loss) was published on April 26, 2011 at 16:28 Hrs on BSE and at 16:15 Hrs on NSE. The impact of the financial results on price of KBL is as under:

5.3.1.2.1. On BSE, the price of scrip increased by 15.70% from Apr 26 to Apr 27, 2011. For the same time the trading volume Increased by 5518.22% from Apr 26 to Apr 27, 2011.

5.3.1.2.2. On NSE, the price of scrip increased by 16.85% from Apr 26 to Apr 27, 2011. For the same time the trading volume Increased by 2489.25% from Apr 26 to Apr 27, 2011.

5.4. **Financial results for the quarter July-September, 2010:**

5.4.1. It is noted that the financial results for the quarter July-September, 2010 was published on October 28, 2010. The chronology of events leading up to the disclosure of financial results of quarter July - September 2010 on October 28, 2010 on exchange platform, which is as under:

Table No. 3

Sl. No.	Subject Matter of the Event	Relevant Date
1.	Interim monthly financial information* for July 2010 to Kirloskar Group – Management Operating Board (KG-MOB)	August 06, 2010
2.	Viability study report of Kirloskar Constructions and Engineers Ltd. (KCEL)	August 28, 2010
3.	Re-circulated - Viability study report on KCEL	September 01, 2010
4.	Interim monthly financial information for August, 2010 to KG-MOB	September 03, 2010
5.	Notice of Board meeting scheduled on October 28, 2010	October 11, 2010
6.	Intimation of the Board meeting to Stock Exchanges	October 12, 2010
7.	Intimation regarding closure of Trading Window	October 18, 2010
8.	Agenda for the Board meeting along with draft financials for September 30, 2010	October 20, 2010
9.	Interim monthly financial information for September, 2010	October 25, 2010
10.	Financial results forwarded to BSE and NSE for quarter and half years ended September 30, 2010	October 28, 2010

**Monthly financial information was shared with promoters/ directors/ key managerial personnel jointly referred as KG- MOB (Kirloskar Group- Management Operating Board) on monthly basis.*

5.4.2. The interim monthly financials information of KBL for July 2010, August 2010 and September 2010, inter alia, was shared with Sanjay, husband of Noticee No.2 and Trustee of Noticee No.1.

5.4.3. The interim monthly financial information (hereinafter referred to as **"KG MOB Report"**) for July 2010, August 2010 and September 2010 was shared with KG-MOB on August 06, 2010, September 03, 2010 and October 25, 2010 respectively: The said KG MOB Report contains monthly and yearly financial facts and figures regarding Profit and loss account, fixed cost comparative analysis with Annual Operating Plan (AOP), Balance sheet, Fund flow statement, cash generation report, Overview of the capital market performance of the company, Key financial ratios, Overview of subsidiary accounts, Manpower productivity, Details of borrowing outstanding of the company as of date etc.

5.4.4. From the quarterly results, it was observed that the operating income during quarter ended September 30, 2010 decreased to Rs.447.93 crore from Rs.552.64 crore in the previous year quarter (September 2009) i.e. a decrease of Rs.104.71 crore (i.e.-18.95%). In the same period, Profit After Tax (PAT) also decreased to Rs.19.49 (quarter ended September 30, 2010) crore from Rs.33.14 crore (quarter ended September 30, 2009) i.e. a decrease of Rs.13.65 crore (i.e.-41.19%).

5.4.5. From the monthly financial results for July 2010 and August 2010 shared with KG-MOB (including Sanjay), it was observed that:

5.4.5.1. the total income for month July, 2010 increased to Rs.142.0 crore from Rs.122.8 crore in comparison to the previous year month (July 2009) i.e. an increase of Rs.19.2 crore (or 15.63%). However, in the same period, PAT decreased to Rs.18.0 crore (July 2010) from Rs.31.0 crore (July 2009) i.e. a decrease of Rs.13 crore (i.e.-41.94%).

5.4.5.2. the total income for month August, 2010 decreased to Rs.149.10 crore from Rs.277.10 crore in comparison to the previous year month (August 2009) i.e. a decrease of Rs.128.0 crore (i.e.-46.19%). In the same period, PAT decreased to Rs.11.1 (August 2010) crore from Rs.22.9 crore (August 2009) i.e. a decrease of Rs.11.8 crore (i.e.-51.53%).

5.4.6. Thus, it was alleged that the financial position of KBL in September 2010 had deteriorated both on monthly and quarterly basis in comparison to previous year (2009) month and quarter respectively.

5.5. **Financial results for the quarter and year ended on March 31, 2011, in which loan to KCEL was written-off:**

5.5.1. It was observed that a note was attached with the agenda of board meeting of KBL dated March 8, 2010, regarding performance and strategic options for KCEL. In the note, inter-alia, it was mentioned, KCEL was incurring losses consecutively since past three years. Three strategic options were suggested for KCEL out of which one was Divestment – which stated that there could be a loss of about Rs.53 crore to Rs.58 crore on 100% stake sale. This shall be a capital loss and one time.

5.5.2. The board meeting of KBL dated March 8, 2010, inter-alia, was attended by Sanjay.

5.5.3. In the minutes of the board meeting of KBL dated July 27, 2010, while discussing the financial result of KBL for the quarter ended June 30, 2010, it was recorded that a presentation on KCEL was sought by some of the board members. Accordingly, a report on the viability study of KCEL was prepared.

5.5.4. A report on the viability study of KCEL, inter-alia, was shared with Sanjay on August 28, 2010.

5.5.5. In the board meeting of KBL dated September 3, 2010, one of the agenda was to consider disposal of investments in KCEL. In the said board meeting, three options were considered for KCEL – (a) Option 1 - Sale of KCEL (as is where is basis and other options), (b) Option 2 - Merger with KBL, (c) Option 3 - Continuance of KCEL on standalone basis. Out of which the minimum loss that would incur to KBL would be around Rs.64.96 crore through Option 1 - sale of KCEL on 'As is where is basis'. The board approved the option 1 i.e. for sale of KCEL for value upto Rs.65 crore,

5.5.6. In the board meeting of KBL held on April 26, 2011, the board of KBL explored other options regarding KCEL and approved to write off Rs.67.47 crores towards loan in the form of advance given to KCEL. The same was disclosed to

the stock exchanges on April 26, 2011 with financial results for the year and quarter ended on March 31, 2011**.**

5.5.7. Thus, it was observed that the amount written- off to the tune of Rs.67.47 crore was about 57.42% of the Profit After Tax of previous FY 2009-10 of KBL

5.6. **Price Sensitive Information (PSI) and Unpublished Price sensitive Information (UPSI):**

5.6.1. On the basis of above, following PSI were identified as UPSI, under Regulation 2(ha) read with regulation 2(k) of PIT Regulations, 1992:

Table No. 4

Sl. No.	Identified UPSI	UPSI Period
1.	Capital loss of the investment / advances given to Kirloskar Constructions and Engineers Ltd. (KCEL) wholly owned subsidiary of KBL	March 8, 2010 to April 26, 2011
2.	Financial results for the quarter July-September 2010.	August 06, 2010 to October 28, 2010

5.7. **Insiders with respect to the identified UPSI:** It is observed that following persons were insiders with respect to the identified UPSI i.e. financial result for quarter July-September 2010 and capital loss of the investment / advances given to KCEL:-

Table No. 5

Sl. No.	Name	Designation	Basis for Insider/possession of UPSI
1	Kirloskar Brothers Ltd. Employees Welfare Trust Scheme	Promoter	Sanjay Kirloskar who is Chairman and Managing Director (CMD) in KBL, is also trustee of this trust and hold shares on its behalf. Sanjay Kirloskar: • Attended board meeting of KBL on March 8, 2010, where in note on performance and strategic options for KCEL was discussed. • Received financial of KBL for the month July and August 2010 as part of KG-MOB on August 6, 2010 and September 3, 2010 respectively. • Received viability report of KCEL on August 28, 2010.
2	Pratima Sanjay Kirloskar	Promoter	• Promoter and relative i.e. wife of Sanjay Kirloskar (who was CMD in KBL) – she is deemed to be connected person and is reasonably expected to have access to unpublished price sensitive information. • Director in PIPL.

Sl. No.	Name	Designation	Basis for Insider/possession of UPSI
			• Vide email dated August 19, 2019, PIPL replied that being connected persons and deemed insiders, all the buyers and sellers are insiders and connected persons.
3	Prakar Investments Pvt. Ltd. (PIPL)	Promoter	• Sanjay Kirloskar was Chairman and Managing Director in PIPL • Vide email dated August 19, 2019, PIPL replied that being connected persons and deemed insiders, all the buyers and sellers are insiders and connected persons
4	Hematic Motors Pvt. Ltd. (Presently, Karad Projects and Motors Ltd.)	Promoter	• Hematic Motors Pvt. Ltd. was disclosed as promoter • Karad Projects and Motors Ltd. (Formerly Hematic Motors Pvt. Ltd.) vide email dated August 17, 2019 informed that it is a connected person and thus a deemed insider.

5.8. **Trading in the shares of KBL:** It was observed that on October 14, 2010, the promoters have carried out transactions in the shares of KBL. The details of the transactions are as under:

Table No. 6

Name	Designation	Buy (Qty)	Sell (Qty)	Avg. Buy/ Sell Price (Rs.)
Pratima Sanjay Kirloskar	Promoter	0	1,42,700	244.50
Prakar Investments Pvt. Ltd.	Promoter	1,43,200*	0	244.50
Kirloskar Brothers Ltd. Employees Welfare Trust Scheme in which Sanjay C Kirloskar was Trustee**	Promoter/ CMD	78,750	0	244.50
Hematic Motors Pvt. Ltd. (Presently, Karad Projects and Motors Limited)	Promoter	0	78,750	244.50
* PIPL bought 1,42,700 shares from Pratima Kirloskar and additional 500 shares of KBL on Oct 14, 2010, from the market ** The shares of Kirloskar Brothers Limited Employees Welfare Trust Scheme are held in the name of its Trustee i.e. Sanjay C Kirloskar				

5.9. In view of the above, it is alleged that the Noticee 1 to 4, being insiders, traded in the shares of KBL when in possession of UPSI, thereby, they violated the provisions of Section 12A(d) and (e) of SEBI Act, 1992, Regulation 3(i) read with Regulation 2(ha) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

5.10. **Unlawful /ill-gotten gains**: The unlawful /ill-gotten gains made by the selling insiders is as under:

Table No. 7

Sl. No.	Name	No of Shares Sold	Selling Price (Rs.)	Closing price on April 27, 2011 (Rs.) **	Unlawful Gain (Rs.) *
1	Pratima Sanjay Kirloskar – Notcee No 2	1,42,700	244.50	178.30	94,46,740.00
2	Karad Projects and Motors Ltd. (Formerly Hematic Motors Pvt. Ltd.) – Noticee No. 4	78,750	244.50	178.30	52,13,250.00

** Basis of calculation-*
(No of shares sold when in possession of UPSI X weighted average sale price) – (No. of shares sold when in possession of UPSI X Closing price on the day of UPSI becoming public)

*** The announcement of the financial results for the quarter July-September, 2010 was published on October 28, 2010 at 13:50 Hrs on BSE and at 16:10 Hrs on NSE. Further, the announcement of the financial results for the quarter and year ended on March 31, 2011, in which advances given to KCEL was written-off (capital loss) was published on April 26, 2011 at 16:28 Hrs on BSE and at 16:15 Hrs on NSE. In view of this as the UPSI period of capital loss was longer than the financial result for quarter July-September 2010, the closing price of scrip on April 27, 2011 i.e. Rs.178.30 at BSE is considered for computation of wrongful gains.*

5.11. **Pre-clearances**

5.11.1. It is noted that the during the investigation period the insiders namely, Noticee No.1 and 2 who have dealt in the shares of KBL on October 14, 2010 were required to take pre-clearance from KBL.

5.11.2. Noticee No.1 and 2, vide separate letters dated October 12, 2010 has sought pre-clearance from KBL while giving a declaration that they have no access to Unpublished Price Sensitive Information by the signing of the undertaking.

5.11.3. It is observed that the Noticee No. 1 and 2 were in possession of UPSI when they had applied for pre-clearances on October 12, 2010, however while seeking pre-clearance from the KBL they had given undertaking that they had no access to UPSI. Therefore, it is alleged that the declarations / undertakings given by the Noticee No.1 and 2 were incorrect and thereby violated Part A, of clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of PIT Regulations 1992.

5.12. **Summary of Allegations:** It is alleged in the SCNs that:

5.12.1. The Noticee 1 to 4, being insiders, traded in the shares of KBL while in possession of UPSI, and thereby, they violated the provisions of Section 12A(d) and (e) of SEBI Act, 1992, Regulation 3(i) read with Regulation 2(ha) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

5.12.2. The declarations / undertakings given by the Noticee No. 1 and 2 were incorrect and thereby violated Part A, of clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of PIT Regulations 1992.

5.13. It is noted that SSCN dated July 24, 2020 had referred to the Section 15G of SEBI Act, 1992. Therefore, by virtue Section 15G of SEBI Act, 1992 Noticee No. 1 to 4 are also alleged to have traded in the shares of KBL on October 14, 2010 on the basis of UPSI.

6. **Delivery of SCNs:** From the document available on records, it is noted that SCN and SSCN was delivered to Noticee No. 1 to 4. The proof of delivery is available on record.

INSPECTION OF DOCUMENTS:

7. From the document available on records, it is noted the authorized representative of Noticee No. 1 to 4 vide letters dated December 20, 2019, January 29, 2020 and January 31, 2020 had requested for inspection of documents. SEBI vide notices dated January 21, 2020 and February 06, 2020 had granted an opportunity of inspection to Noticee No. 1 to 4 on January 24, 2020 and February 12, 2020 respectively and the same was availed by them.

REPLY AND WRITTEN SUBMISSION:

8. The authorized representative of Noitcee No. 1 to 4 vide letter dated July 14, 2020 and August 12, 2020 had submitted the reply to the SCN and SSCN. Their submissions in brief are as under:

8.1. **Violation of Principles of Natural Justice - Inspection of documents:** The relevant material in the formulation of the charges contained in the SCN has not been provided to the Noticees. The failure on the part of SEBI to provide all materials/ documents/evidence relied upon in the SCN is contrary to the settled principles of natural justice. In this regard, Noticees have placed reliance to the observations made by the Hon'ble Supreme Court of India *("Supreme Court"*) in *Union of India v. E. Bashyan,* [(1998) 2 SCC 196*], in Chandrama Tewari v. Union of India* [(UOI) AIR 1988 SC 117] *and in Moni Shankar v. Union of India* [(2008) 3 SCC 484]. Noticees further placed reliance to the observations made by the Hon'ble Securities Appellate Tribunal ("SAT") in *Ms. Smitaben N. Shah v. SEBI, [Appeal No. 37 of 2010*] and in *Price Waterhouse v SEBI, [Appeal No. 8 of 2011*].

Submissions on Merits

8.2. The Noticees are an integral part of the promoter group of KBL and are inter-connected and insiders who are all evenly placed, for the purposes of PIT Regulations, 1992. The transactions are between insiders who are all evenly placed with the very same reasonable likelihood of access to information, whether unpublished or price-sensitive or otherwise. Therefore, the transactions cannot be said to be in violation of PIT Regulations 1992 and amount to insider trading.

8.3. The transactions referred to in the SCN were also reported to the stock exchanges as inter se exempt transactions between promoters, under the relevant provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SAST Regulations").

8.4. The purpose of prohibiting insider trading has its genesis in the general rule backed by the principle that no insider should gain undue benefit by trading with the benefit of possessing UPSI which the rest of the market does not have and therefore, gain an advantage over the market. For a charge of insider trading to be established, the following need to be present –

8.4.1. one of the parties to the trade must have asymmetrical access to UPSI;

8.4.2. it should be possible to conclude reasonably that such party is in possession of UPSI and the other party is not in possession of the UPSI;

8.4.3. the nature of the trade ("buy" or "sell") by the party in possession of UPSI should be consistent with the character of the UPSI (i.e. such person ought to have made a purchase before positive information becomes published, and such person ought to have made a sale before adverse information becomes published);

8.4.4. there must be no defence available that can justify and explain the trades alleged to constitute insider trading, whether or not such defence forms part of the listed, illustrative list of valid defences contained in the insider trading regulations in place.

8.5. The parity of information amongst the trading entities is a valid defence for the charge of insider trading as it negates the basis of insider trading, being 'asymmetry of information' as between the counterparties to a trade. In this regard, Noticees have placed reliance in the Report of the High-Level Committee to Review the PIT Regulations, 1992 ("Sodhi Committee Report").

8.6. With regard to inter se transfers between promoters/insiders, wherein the parties on both sides of the transactions, were privy to the very same UPSI and did not gain an unfair advantage over the other, Noticee placed reliance to the observations made by the Hon'ble SAT in *Alpha Hi-Tech Fuel Ltd. v. SEBI* (Appeal No. 142 of 2009), in *Manmohan Shetty v. SEBI* (Appeal No 132/2010), in *Sudhir Reddy v. SEBI*(Appeal No. 138 of 2011)

8.7. **Background to the transactions:** In the year 2010 a review of the shareholding was undertaken and the family office examined internal restructuring of holdings and certain transfers of KBL shares to Mr. Sanjay Kirloskar's family and also the other family factions. The said inter se promoter transfers from Noticee No. 2 to Noticee No. 3 and from Noticee No. 4 to Noticee No. 1 were pursuant to such internal restructuring exercise undertaken by the family. In the light of this background, following is submitted:

8.8. Sale of 1,42,700 shares of KBL by Noticee No.2 and the simultaneous purchase of 1,42,700 shares by Noticee No. 3 ("Transaction No. 1"):

8.8.1. The Noticees were desirous that PIPL, the investment company, must hold certain shares of KBL and hence it was decided that Noticee No. 2 may enter into Transaction No. 1 with PIPL.

8.8.2. Noticee No. 3, PIPL is a private limited company wholly owned by Mr. Sanjay Kirloskar and his wife Mrs. Pratima Kirloskar, Noticee No. 2 and hence it cannot be reasonably argued that Transaction No. 1 was influenced by any desire to benefit from any asymmetrical access to any information.

8.8.3. As regards the 500 shares additionally acquired by Noticee No. 3, it is submitted that since the inter se transfer was executed on the online platform of BSE Limited, a market order got executed. In any case, since Noticee No. 3 was a buyer and the allegation in the impugned SCN is that there was adverse information of KBL, no prejudice was caused to the seller in the market.

8.9. Sale of 78,750 shares of KBL by Karad and the simultaneous purchase of 78,750 shares by Noticee No. 1 ("Transaction No. 2")**:**

8.9.1. Noticee No. 1 was on both sides of the transaction. Mr. Sanjay Kirloskar, CMD of KBL, was acting in his capacity as the Trustee of Noticee No. 1 i.e. KBL EWT and at the same time he was the CMD of KBL, holding company of Karad.

8.9.2. Karad was a 100% subsidiary of KBL and held the 78,750 shares of KBL, it was thought prudent to transfer the said shares to the KBL EW Trust. Mr. Sanjay Kirloskar, could have purchased the shares in his capacity as a promoter, but in

order to avoid conflicts of interests (as Noticee No. 4 was a subsidiary of KBL of whom Mr. Sanjay Kirloskar is the CMD), Noticee No. 1, of which the employees of KBL are the beneficiaries, purchased the shares. It is also a fact that KBL is a company paying dividends continuously and the acquisition of shares by Noticee No. 1 benefitted it by earning income to spend on the welfare of the employees.

8.9.3. The allegation in the impugned SCN that Noticee No. 4 avoided a loss is without basis, because the accounting principles of consolidation require the cancellation of capital at the holding company level. On the contrary, it is submitted that by acquiring the shares from Noticee No. 4 at a higher price, Noticee No. 1, a private promoter entity, has given a benefit to Noticee No. 4.

8.10. Thus, for the reasons stated hereinabove, Transaction No. 1 and Transaction No. 2 cannot be held to be entered into by the Noticees in violation of Section 12 A (d) and (e) of the SEBI Act, Regulation 3 (i) read with Regulation 2(ha) of the PIT Regulations 1992.

8.11. **Noticees No. 2 was not in possession of UPSI:** Noticee No. 2, was not a member of the Board of KBL and was not attending any KG MOB meetings and was not personally aware of any UPSI, as alleged. No concrete proof/evidence has been brought on record by SEBI in the SCN to show that Noticee No. 2 being the seller under Transaction No. 1, was in possession of any UPSI, which Noticee No. 3 was not privy to, at the time of entering into the transaction in question on October 14, 2010. The charge of PIT Regulations 1992 is a serious allegation and cannot be levied on the basis of surmises and conjunctures. In this regard, Noticees placed reliance to the observations made by the Hon'ble SAT in the matter of *Manoj Gaur and Ors. v. SEBI [Appeal No. 64 of 2012, 3 October 2012],* in the matter of *Dilip S. Pendse v. SEBI [Appeal No. 80 of 2009, 19 November 2009]* and in the matter of *Samir C Arora vs SEBI [Appeal No.83 of 2004, 15 October, 2004]*

8.12. **Buying Noticees continue to hold the shares of KBL:** As on date of the reply, the buying Noticees continue to hold the shares purchased in the impugned transactions and further, the promoters continue to hold 3,19,63,609 equity shares of shares of KBL constituting 40.25% of the total shareholding of KBL. The transactions did not result in any change in the overall promoter shareholding of KBL; nor in any change in the total shareholding percentage of KBL's promoters vis- a- vis KBL's public shareholders. Hence, the said inter-se transfer as between the Noticees, has also not adversely impacted the public shareholding of KBL.

8.13. The Noticees submit that Transaction No. 1 and Transaction No. 2 were transactions; executed by the Noticees without being "in possession of" or "on the basis of" any UPSI pertaining to KBL especially when two of the four Noticees have acted contrary to the alleged UPSI. In this regard, Noticees placed reliance to the observations made by the Hon'ble SAT in the matter of *Chandrakala v. SEBI*

[Appeal No. 209 of 2011], in the matter of *Manoj Gaur and Ors. v. SEBI [Appeal No. 64 of 2012]*.

8.14. **Submission on Disgorgement:** Since the primary allegation of violating Regulation 3 of PIT Regulations 1992 does not arise, no direction can be issued by SEBI in exercise of its powers under Section 11 and 11B of the SEBI Act including the disgorgement of any amount. The transactions in question are private inter se transfers, between the insiders/promoters and there is no public interest involved, hence, there is no question of one party having made any wrongful/ illegal profits/gains or avoided losses at the expense of the counter party.

8.15. **Submission on undertaking:**

8.15.1. The Noticee No. 2 was not personally aware of any UPSI and there is no evidence on record to show that Noticee No. 2 was informed of UPSI or put in possession of any UPSI at the time of giving any undertaking for Transaction No. 1 or while submitting any undertaking for seeking pre-clearance for the said transaction. In any case, the undertaking was given as a procedure when the trading window was open and there was no misuse of UPSI, in view of the transaction that she was on both sides of the Transaction No. 1.

8.15.2. The Noticee No. 1, was on both sides of the transaction between KPML and KEW Trust, and as the CMD he is always in possession of all information about the KBL. Noticee No. 1 acting for KBL EW Trust, a promoter group entity, purchased the shares from Noticee No. 4, another promoter group entity at a higher price giving a benefit to Noticee No. 4. The pre-clearance declaration should be seen only in the light of the fact that it was a procedure and the trading window was open. Mr. Sanjay Kirloskar, who was the CMD of KBL could not have carried out the inter se transfer without complying with the procedure.

8.16. **Submission on Imposition of monetary penalty:**

8.16.1. In view of the above submissions, no violations of provision of SEBI Act, 1992 and PIT Regulations, 1992 as mentioned in the SCN and SSCN has been made out against the Noticee No. 1 to 4, therefore the issue of levying any penalty upon them under AO Rules 1995 does not arise.

8.16.2. Without prejudice to above, the factors specified in section 15J of the SEBI Act has to be considered.

HEARING:

9. In the interest of natural justice, vide notice of hearing dated June 30, 2020 an opportunity of personal hearing was granted to Noticee No. 1 to 4, on July 23, 2020 through video conference via WEBEX link. The said hearing notice dated June 30, 2020 was sent to the Noticees through email and the same was delivered. The AR of Noticee No. 1 to 4 vide email dated July 21, 2020 had requested for adjournment of hearing. Acceding to the request and in the interest of Natural Justice, hearing in the matter was adjourned to July 31, 2020 and same was communicated to Noticees No. 1 to 4 by SEBI vide email dated July 22, 2020. The AR of Noticee No. 1 to 4 vide email dated July 28, 2020 stated that in view of SSCN dated July 24, 2020, hearing scheduled on July 31, 2020 may be adjourned to another date. Acceding to the request and in the interest of Natural Justice, hearing in the matter was adjourned to August 11, 2020 through video conference via WEBEX link and same was communicated to Noticees No. 1 to 4 by SEBI vide email dated July 31, 2020

10. On August 11, 2020, Mr. Somashekar Sundaresan, Senior Counsel, Mr P.R. Ramesh, Advocate, Mr Tomu Francis, Khaitan & Co and Mr Manish Chhangani, Khaitan & Co Authorized Representative (hereinafter referred to as **"AR"**) on behalf of Noticee No. 1 to 4 had appeared through video conference via WEBEX link and made oral submissions. The matter was heard at length. The AR made the oral submissions in line of reply dated July 14, 2020 made by Khaitan & Co. on behalf of Noticee No. 1 to 4. AR submitted that the reply in respect of Supplementary SCN dated July 24, 2020 be submitted by the end of the day and there are no further submissions to make in the matter.

FINDINGS AND CONSIDERATION:

11. I have perused the SCN, SSCN, replies, written submissions and other materials available on record. On perusal of the same, the following issues arise for consideration. Each issue is dealt with separately under different headings:

11.1. ***Whether Noticee No. 1 to 4 had traded in the shares of KBL while in possession of and / or on the basis of UPSI and thereby violated the provisions Section 12A(d) and (e) of SEBI Act, 1992 and provisions of Regulation 3(i) read with Regulation***

2(ha) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 as alleged in the SCN?

11.2. ***Whether Noticee No. 1 and 2 had violated clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of PIT Regulations 1992 as alleged in the SCN?***

11.3. ***If issue No. 1 and 2 are determined in affirmative in full or in part, then what directions including disgorgement under Sections 11(1), 11(4), 11B(1) of SEBI Act, 1992 and / or monetary penalty under Sections 15G and 15HB of SEBI Act, 1992 should be issued / imposed against the Noticee No. 1 to 4 for their respective violations?***

<u>Preliminary Objection:</u>

12. Before moving forward in the matter, I firstly discuss preliminary objection raised by the Noticees:

12.1. **Inspection of Documents:**

12.1.1. Noticees have submitted that relevant material in the formulation of the charges contained in the SCN has not been provided to the Noticees including copy of investigation report, documents pertaining to the proceedings initiated by SEBI against six individual promoter entities of KBL etc. The failure on the part of SEBI to provide all materials/ documents/evidence relied upon in the SCN is contrary to the settled principles of natural justice.

12.1.2. In this regard, it is noted from the records, that all the material / evidences based on which the charges in the SCNs have been levelled on the Noticees were enclosed along with the SCNs as annexures. It is also noted that SEBI had granted an opportunity of inspection of all relied upon documents to the Noticees. Further, it is noted that upon request of Noticees, the copies of relied upon documents were also provided to them through letter as well as at the time of inspection of documents. The details of inspection of documents granted to Noticees are mentioned at paragraph 7 above. Thus, no prejudice has been caused to the Noticees on account of the same.

12.1.3. Reliance is also placed on the Hon'ble Supreme Court order dated October 05, 2010 passed in the matter of *Kanwar Natwar Singh vs Directorate of Enforcement & Anr* (MANU/SC/0795/2010) and order of Hon'ble SAT dated February 12, 2020 in Shruti Vora vs. SEBI wherein it was held that the requirement is to supply the documents relied upon while serving the show cause notice.

12.1.4. In view of the above facts, circumstances and observations of Hon'ble Supreme Court and Hon'ble SAT, I am of view that the contention of the Noticees that relevant material in the formulation of the charges contained in the SCN has not been provided to the Noticees is untenable. At this point, I also find it important to reiterate that all the documents, which formed the basis of the allegations leveled in the SCNs, were provided to the Noticees along with the SCNs and also through letter as well as at the time of inspection of documents. Further, I note that under the present investigation, SEBI had also initiated enforcement action and issued SCNs against six other individual promoter entities of KBL for the alleged violation of PIT Regulations, 1992 and PFUTP Regulations, 2003 for the transaction dated October 06, 2010. Therefore, there is no justifiable right to seek the copy of investigation report and documents pertaining to the proceedings initiated by SEBI against six other individual promoter entities of KBL, when all relied upon documents for the relevant SCN have been furnished.

12.1.5. Noticees have placed reliance in the Hon'ble SAT in *Price Waterhouse v SEBI, Appeal No. 8 of 2011*. In this regard, I note that Hon'ble SAT in the matter of *Shri B. Ramalinga Raju v. SEBI* (SAT order dated May 12, 2017, MANU/SB/0057/2017) stated that the quasi-judicial authority must adhere to the principles of natural justice which includes the obligation to furnish requisite documents on the basis of which charges are framed.

12.1.6. Thus, in view of the above facts, the others case laws cited by the Noticee No. 1 to 4 are not applicable in the present matter as the documents relied upon in formulation of the charges contained in the SCN have already been granted to them in consonance with the principles of natural justice.

MERITS

13. I now proceed to deal the matter on merits. Before moving forward, it will be appropriate to refer to the relevant provisions of SEBI Act, 1992 and PIT Regulations, 1992, which read as under:

SEBI Act, 1992

Section 12A. *No person shall directly or indirectly—*

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PIT Regulations, 1992

Definition:

Regulation 2(d) *"dealing in securities" means an act of subscribing, buying, selling or agreeing to subscribe, buy, sell or deal in any securities by any person either as principal or agent;*

Prohibition on dealing, communicating or counselling on matters relating to insider trading.

Regulation 3. *No insider shall -*

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

(ii) ……

Violation of provisions relating to insider trading.

Regulation 4. *Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.*

Issue No.1 ***Whether Noticee No. 1 to 4 had traded in the shares of KBL while in possession of and / or on the basis of UPSI and thereby violated the provisions Section 12A(d) and (e) of SEBI Act, 1992 and provisions of Regulation 3(i) read with***

Regulation 2(ha) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 as alleged in the SCN?

Sub-Issue No. 1.1: *Whether Noticee No. 1 to 4 were insiders in terms of Regulation 2(e) of PIT Regulations, 1992?*

Sub-Issue No. 1.2: *Whether the information of capital loss of the investment / advances given to KCEL, wholly owned subsidiary of KBL, was price sensitive information in terms of Regulation 2(ha) of PIT Regulations, 1992 and was unpublished for the period March 8, 2010 to April 26, 2011 in terms of Regulation 2(k) of PIT Regulations, 1992?*

Sub-Issue No. 1.3: *Whether Noticee No. 1 to 4 were in possession of UPSI-1 when the transaction dated October 14, 2010 happened and thereby traded in the shares of KBL on October 14, 2010 while in possession of UPSI-1?*

Sub-Issue No. 1.4: *Whether Noticee No. 1 to 4, on October 14, 2010 had traded in the shares of KBL on the basis of UPSI-1?*

Sub-Issue No. 1.5: *Whether information of financial results of KBL for quarter July – September 2010 was price sensitive information in terms of Regulation 2(ha) of PIT Regulations, 1992; and was unpublished for the period August 06, 2010 to October 28, 2010 in terms of Regulation 2(k) of PIT Regulations, 1992; and Whether Noticee No. 1 to 4 were in possession of said information on October 14, 2010 and thereby traded in the shares of KBL on October 14, 2010 while in possession of and / or on the basis of said information?*

14. I now proceed to deal with the issues as follows:

Sub-Issue No. 1.1: *Whether Noticee No. 1 to 4 were insiders in terms of Regulation 2(e) of PIT Regulations, 1992?*

15. As regards the issue of whether Noticee No. 1 to 4 were insiders, the same is to be tested as per the definition provided in the PIT Regulations, 1992. The relevant provisions in the PIT Regulations, 1992 are reads as under:

Regulation 2(e) *"insider" means any person who,*

(i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or

(ii) has received or has had access to such unpublished price sensitive information;

Regulation 2(c)

"connected person" means any person who—

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company

Explanation :—For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading"

Regulation 2(h)(vii) *"person is deemed to be a connected person", if such person is relatives of the connected person.*

Regulation 2(i) *"relative" means a person, as defined in section 6 of the Companies Act, 1956 (1 of 1956)*

16. As per Regulation 2(e) of PIT Regulations, 1992, insider means (1) any person who is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company (2) any person who has received or has had access to such unpublished price sensitive information. As per Regulation 2(c) of PIT Regulations, 1992, "connected person" includes any person who is a "director" of a company, as defined in clause (13) of section 2 of the Companies Act, 1956 and person who occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company. As per section 2(13) of the Companies Act 1956, a "Director" includes any person occupying the position of director, by whatever name called. As per Regulation 2(h) of PIT Regulations, 1992, "Person is deemed to be connected person" includes person who is relatives of the connected person. As per Section 6 of Companies Act, 1956 relatives include inter alia husband and wife.

17. In the present matter, during the period from March 01, 2010 to April 30, 2011, following connections were noted of Noticee No. 1 to 4 with KBL:

Table No. 8

Sr. No.	Noticee No.	Name	Designation in KBL	Relation with other Noticee
1	Noticee No. 1	Sanjay Kirloskar, Trustee of Kirloskar Brothers Ltd. Employees Welfare Trust Scheme	Director / Promoter of KBL	Trustee of Kirloskar Brothers Ltd. Employees Welfare Trust Scheme
2	Noticee No. 2	Pratima Sanjay Kirloskar	Promoter	Wife of Sanjay
3	Noticee No. 3	Prakar Investments Pvt. Ltd.	Promoter	Sanjay and Pratima are directors of Noticee No.3
4	Noticee No. 4	Karad Projects and Motors Ltd.	Promoter and subsidiary of KBL	100% subsidiary of KBL

18. From the submissions of Noticees, I note that they have not denied, rather, have accepted the aforesaid connection with KBL as well as with other Noticees. Thus, I am of the view that as per Regulation 2(c) and 2(h) of PIT Regulations, 1992, Sanjay (promoter/director of KBL), trustee of Noticee No. 1 is connected person with KBL. As per the Schedule – IA of Section 6(c) of Companies Act, 1956, Noticee No. 2 (promoter of KBL) is wife of Sanjay, thereby relative. In Noticee No. 3 (promoter of KBL), Pratima is director and Sanjay is chairman and managing director. Noticee No. 4 (promoter of KBL) is 100% subsidiary of KBL. Thus, Noticee No. 2, 3 and 4 are persons deemed to be connected persons with KBL. Thus, I am of the view that Noticee No. 1 to 4, by virtue of their connection with KBL as mentioned in table above, by virtue of close relationship of Noticee No. 2 being wife of Sanjay / Noticee No. 1, are reasonably expected to have access to unpublished price sensitive information in respect of KBL. Further, from the submission of Noticee No. 1 to 4, I note that they had accepted that they are the part of promoter group of KBL and are inter-connected and insiders for the purposes of PIT Regulations, 1992.

19. Noticee No. 2 submitted that she was not a member of the Board of KBL and was not attending any KG-MOB meetings and was not personally aware of any UPSI and no evidence has been brought on record by SEBI. In respect of a wife being an insider and being reasonably expected to have UPSI, Hon'ble SAT in the matter of *Poonam Garg vs SEBI* decided on March 22, 2018 has observed that *".....the appellant is a Promoter/Non-*

Executive Director of the company and her husband is also a Promoter/ Managing Director/ Compliance Officer of the company is sufficient to hold that the appellant is an 'insider' and was privy/ reasonably privy to the PSI.....In such a case, it is not open to the appellant to feign ignorance about the PSI and take shelter under the violations committed by her husband as Promoter/ Managing Director/ Compliance Officer of the company.....". Thus, in view of said Hon,ble SAT order, I am of the view that Noticee No. 2 being a promoter of KBL and wife of Sanjay (Chairman and Managing Director of KBL) is an insider and is reasonably expected to have UPSI.

20. Hence, I am of the view that Noticee No. 1 to 4 are insiders in terms of Regulation 2(e) of PIT Regulations, 1992.

Sub-Issue No. 1.2: *Whether information of capital loss of the investment / advances given to KCEL, wholly owned subsidiary of KBL, was price sensitive information in terms of Regulation 2(ha) of PIT Regulations, 1992 and was unpublished for the period March 8, 2010 to April 26, 2011 in terms of Regulation 2(k) of PIT Regulations, 1992?*

21. In this issue, I proceed to determine whether there was information of capital loss of the investment / advances given to KCEL, wholly owned subsidiary of KBL, (hereinafter referred to as ***"PSI-1"***) as alleged in the SCN. If such information was there, then the question arises whether such information was price sensitive information as alleged in the SCN and when it came into the hands of the insiders, and till when it remained unpublished.

22. The relevant provisions in the PIT Regulations, 1992, in this regard read as under:

> ***Regulation 2(ha)*** *- Price sensitive information means any information which related directly or indirectly to a company and which if published is likely to materially affect the price of the securities of the company.*
> *Explanation – The following shall be deemed to be price sensitive information:-*
> *i. periodical financial results of the company;*
> *……*
> *(vi) disposal of the whole or substantial part of the undertaking;*

23. As per Regulation 2(ha) of PIT Regulations, 1992 "price sensitive information" means any information which relates directly or indirectly to a company and which, if published, is likely to materially affect the price of securities of company. The information relating to periodical financial results, intended declaration of dividend, issuance and buy-back of securities, major expansion plan or execution of new project, amalgamation, merger and takeovers, disposal of whole and substantial part of undertaking or any significant change in policies, plans or operations of the company is generally considered as "price sensitive information" till the time the same is made public. Further, the list given in the explanation is an inclusive list and not an exhaustive one.

24. I note, upon perusal of the agenda of the board meeting of KBL held on March 08, 2010, that a note is attached to the Agenda for the Board Meeting No. 10/2 of KBL dated March 08, 2010. It is noted that though the table of contents of agenda does not have reference to KCEL, however, the Note attached to the agenda has details to consider the performance and strategic options for KCEL. It is noted that during the course of investigation, KBL vide letter dated June 28, 2019 had provided the said Note attached with Agenda for the Board Meeting No. 10/2 of KBL dated March 08, 2010 to SEBI. From the submissions of the Noticees, I noted that they have not denied that such note was attached to the agenda and reliance has been placed only on the existence of the note and not on any discussion thereon. Based on the said note, the facts which were present and known as on March 08, 2010 were as under:

24.1. KCEL had been making losses for 3 years i.e. loss of Rs. 1.39 crore for FY 2006-07, loss of Rs. 3.77 crore for FY 2007-08, loss of Rs. 11.77 crore for FY 2008-09 and was expected to make an estimated loss of Rs. 16 crore for FY 2009-10 i.e. the operations of KCEL were deteriorating;

24.2. The contingent liabilities of KCEL on the account of not providing liquidated damages, various arbitrations that may goes against KCEL, certain notices from customers for risk & purchase as the KCEL was not able to deliver or hand over the projects on time etc. if accounted for in future may increase the losses;

24.3. Networth of KCEL was expected be eroded by the end of the financial year;

24.4. KBL had engaged ICICI Investment Banking Group to identify investors to invest in KCEL i.e. KBL had actively thought of selling KCEL.

25. Based on the above, it appears that the stage had been reached when KBL felt that they would not be able to turn around the business of KCEL and that, if KBL were to sell KCEL, they would get a valuation of approx. Rs. 53 crore to Rs. 58 crore below their invested amount. In normal course, when businesses / entities are divested, one of the methods of doing valuation is to look at the discounted cash flows that the entity is expected to generate in the future. Thus, if an external valuation exercise had thrown up a valuation at Rs. 53 crore to Rs. 58 crore below their invested amount of Rs. 148 crore (Acquisition Price Rs. 60 crore, KBL unsecured Loan Rs. 65 crore and IOB Term Loan Rs. 23 crore) then, as on March 08, 2010, a loss of approximately Rs. 53 crore to Rs. 58 crore had already occurred to KBL on investment / advances given to KCEL, in one form or another, irrespective of what course of action they chose, and it was known that KBL would not be able to recover its entire investment made in KCEL. Thus, the information as to capital loss of the investment / advances given to KCEL had become available as on March 08, 2010, via the Note attached to the Board Agenda.

26. Further, upon perusal of the minutes of the board meeting of KBL dated July 27, 2010, I note that some of board of directors / members had sought a presentation on KCEL, which demonstrated their concern on the issue. Thereafter, a report on the viability study of KCEL was prepared and shared with KG-MOB on August 28, 2010. The viability report stated that KBL had acquired KCEL in 2006-07 for Rs. 61.33 Crore. KBL's financial stake in KCEL as on March 31, 2010 was investment in equity shares of Rs. 71.33 crores (initial Rs. 61.33 crore and additional Rs. 10 crore) and unsecured interest free loans of Rs. 58.63 crores i.e. total financial stakes of Rs. 129.96 crores. The report further stated that *"KCEL is not in position to repay the loan funds of KBL and there is a total diminution in the value of equity shares of KCEL. KBL has already lost opportunity to earn interest by not charging interest on loan. Despite KBL financial assistance, KCEL could not improve its performance"*. The viability report outlined three options to KBL (a) Continuance of standalone KCEL; (b) Merger with the parent company KBL (c) Sale of KCEL (as is where is basis with no future obligation to KBL). The viability report further noted that upon seeking expression of interest, one party had expressed its interest to buy KCEL for Rs. 65 crore (i.e. at a capital loss of Rs. 64.96 crore to KBL). It is also noted that viability

report had estimated the capital loss to Rs 84.96 Crore including a notional interest loss of Rs. 20 Crore.

27. Further, upon perusal of the Minutes of Board meeting of KBL dated September 03, 2010, I note that after due deliberation in the said board meeting of KBL, the recommendation made in the viability report had been considered, adopted and approved in the said board meeting of KBL i.e. the board of KBL after considering the net loss has approved the sale of KCEL on an "as is where is basis" for a value of upto Rs. 65 crore.

28. Further, upon perusal of Minutes of Board meeting of KBL dated April 26, 2011, I note that the outstanding amount advanced to KCEL as of end of March 2011 was about Rs. 67.47 crore. The board of KBL, after considering various reasons and their best effort to revive KCEL, came to the conclusion that no recovery of the due amount was possible and decided to write off the outstanding amount of Rs. 67.47 crore advanced to KCEL.

29. From the submissions of the Noticees, I note that they have neither contended that information of capital loss of the investment / advance given to KCEL by KBL was not price sensitive information nor made any submissions in that regard.

30. In my view, the note attached to the Agenda for the Board Meeting of KBL held on March 08, 2010, made it quite clear that KCEL was hemorrhaging cash and that options were limited. In 3 years the management had not managed to streamline KCEL. A professional process with the investment bankers, for the sale of KCEL, had thrown up a net value that would mean a capital loss of between Rs. 53 crore to Rs. 58 crore. Even pending write off of the loan or write down of investment, insiders knew that a part of the capital invested was lost, and had a reasonable estimate of the same.

31. Thus, the UPSI as alleged in the SCN i.e. information on capital loss of the investment / advances to KCEL came into the hands of the Directors of KBL at the time of circulation of the note attached in the agenda for the board meeting of KBL to be held on March 08, 2010. Thus, it was in their hands on March 08, 2010.

32. Now, in order to ascertain whether the information of capital loss of investment/advance given to KCEL was price sensitive information, what is important is whether such information if published, would materially affect the price of KBL shares. From the documents available on records, I find the PAT of KBL for the FY 2009-10 was Rs. 117.50 crore. An amount of Rs. 53 crore to Rs. 58 Crore was estimated in the March 08, 2010 board meeting agenda note as a one-time capital loss. This estimated one-time capital loss was about 45% to 50% of the PAT of FY 2009-10 of KBL. Clearly impact of the loss on the PAT would be significant. Therefore, the information of capital loss, if known, would be extremely likely to materially affect the price of KBL shares.

33. I note with interest, from the documents available on record, that KBL had acquired 100% equity share capital of KCEL (formerly known as *"Abans Construction Private Limited"*) in September 2006. Upon perusal of KBL disclosures available on BSE website, it is noted that KBL had made a disclosures on September 26, 2006 about the said acquisition of 100% equity share capital of KCEL. I also note that on April 26, 2011, KBL while making the disclosure of audited financial result for the quarter and year ended March 31, 2011, had also made the disclosures that Rs. 67.47 crore advances given to KCEL were written off. Thus, I am of the view that KBL had considered the acquisition of KCEL as well as write-off investment / advances given to KCEL as material information and made the relevant disclosures to the Exchange.

34. Thus, in view of the foregoing, I am of the considered view that the information of capital loss of the investment / advance given to KCEL by KBL would fall within the definition of price sensitive information under Regulation 2(ha) of the PIT Regulations, 1992 as alleged in the SCN.

35. As regards the issue whether PSI is unpublished the same is to be tested as per the definition provided in the PIT Regulations, 1992. The relevant provisions in the PIT Regulations, 1992 are reads as under:

> ***Regulation 2(k) -*** *Unpublished means information which is not published by the company or its agents and is not specific in nature.*

36. As per Regulation 2(k) of PIT Regulations, 1992 "unpublished" means information which is not published by the company or its agents or which is not made public in print or electronic media and is not specific in nature.

37. I note that the important question for consideration in this issue is when the PSI can be said to have originated / come into the hands of the insiders and when such PSI had come into public domain. I note that the date from where the PSI arises till the date such PSI is published is an Unpublished Price Sensitive Information Period (hereinafter referred to as **"UPSI Period"**). I note that the information as to capital loss on investment / advances to KCEL came into the hands of the insiders on March 08, 2010 when the note on KCEL attached with the agenda of the Board meeting of KBL held on March 08, 2010 was circulated. The information regarding capital loss of the investment / advances finally resulted in the writing-off of the loan / advances to KCEL to the tune of Rs. 67.47 crore by KBL in its board meeting dated April 26, 2011. Publication of the financial results incorporating the accounting for the capital loss in the books of account was done on April 26, 2011 as part of the publication of the audited financials results of KBL for the quarter and year ended March 31, 2011. This evidences that the UPSI came into the public domain on April 26, 2011.

38. Thus, information on capital loss of the investment / advances given to the KCEL by KBL (hereinafter referred to as ***"UPSI-1"***) was unpublished for the period March 8, 2010 to April 26, 2011 (hereinafter referred to as ***"UPSI Period-1"***) in terms of Regulation 2(k) of PIT Regulations, 1992.

Sub-Issue No. 1.3: *Whether Noticee No. 1 to 4 were in possession of UPSI-1 before the transaction dated October 14, 2010 and thereby traded in the shares of KBL on October 14, 2010 while in possession of UPSI-1?*

39. I have already held in the first sub-issue above that Noticee No. 1 to 4 were insiders. Now the question arises as to whether these insiders i.e. Noticee No. 1 to 4 were in possession of UPSI -1 during UPSI Period-1, particularly before October 14, 2010 (date of transaction).

40. From the document available on record, with regard to the possession of UPSI-1, I note the following:

40.1. Sanjay Kirloskar (Trustee of Noticee No. 1) had attended the Board Meeting of KBL held on March 08, 2010 wherein the UPSI-I has originated. Thus, I am of the view that as on March 08, 2010, Sanjay Kirloskar (Trustee of Noticee No. 1) was aware of the UPSI-1 of capital loss on investment given to KCEL.

40.2. Sanjay Kirloskar (Trustee of Noticee No. 1) had attended the Board Meeting of KBL held on July 27, 2010, where in some of the Board Members had requested a presentation on KCEL.

40.3. A report on the viability study of KCEL was shared with Sanjay Kirloskar (Trustee of Noticee No. 1) on August 28, 2010, wherein a further confirmation of UPSI of capital loss of investment/advance happened, with presentation of an option of sale of KCEL (as is where is basis), due to which KBL would suffer a net loss of Rs. 64.96 crore.

40.4. Sanjay Kirloskar (Trustee of Noticee No. 1) had attended the Board Meeting of KBL held on September 3, 2010 wherein a reconfirmation of UPSI of capital loss of investment/advance happened, with the disposal of investments in KCEL being discussed and after considering the net loss of Rs. 64.96 crores, it was approved to sell KCEL on an "as is where is basis" for a value of upto Rs. 65 crores.

41. Thus, from the above, I note that regarding UPSI-1, right from March 08, 2010 Sanjay Kirloskar (Trustee of Noticee No. 1) had possession of the same. Thus, I note that before October 14, 2010, Noticee No. 1 had possession of UPSI-1.

42. Further, I note that Sanjay was the Trustee of Noticee No.1; Noticee No. 2 is the wife of Sanjay Kirloskar; Noticee No. 2 & Sanjay were the directors of Noticee No. 3 and Noticee No. 4 is 100% subsidiary of KBL. Furthermore, with regard to the wife being an insider and being reasonably expected to have UPSI, reliance is placed on the judgment of Hon'ble SAT in the matter of *Poonam Garg vs SEBI* decided on March 22, 2018 which is referred at paragraph 19 above. Thus, I am of the view that Noticee No. 1 to 4 were insiders to UPSI - 1. Thus, by virtue of these relationships and being promoters of KBL and on

preponderance of probability basis, I am of the view that Noticee No. 1 to 4 were in possession of UPSI-1 before October 14, 2010.

43. From the document available on record, I note that on October 14, 2010, Noticee No. 1 to 4 had carried out transaction in the shares of KBL. The details of the transactions is as under:

Table No. 9

Name	Designation	Buy (Qty)	Sell (Qty)	Avg. Buy/ Sell Price (Rs.)
Pratima Sanjay Kirloskar	Promoter	0	1,42,700	244.50
Prakar Investments Pvt. Ltd.	Promoter	1,43,200*	0	244.50
Kirloskar Brothers Ltd. Employees Welfare Trust Scheme in which Sanjay C Kirloskar was Trustee**	Promoter/ CMD	78,750	0	244.50
Hematic Motors Pvt. Ltd. (Presently, Karad Projects and Motors Limited)	Promoter	0	78,750	244.50
Total		**2,21,950**	**2,21,450**	

* PIPL bought 1,42,700 shares from Pratima Kirloskar and additional 500 shares of KBL on Oct 14, 2010, from the market
** The shares of Kirloskar Brothers Limited Employees Welfare Trust Scheme are held in the name of its Trustee i.e. Sanjay C Kirloskar

44. From the submission of the Noticee No. 1 to 4, I note that they have not denied the aforesaid transaction rather they have accepted that the said transaction happened between them. Hence, in view of the foregoing, I am of the view that Noticee No. 1 to 4 were in possession of UPSI- 1 on the date of transaction dated October 14, 2010 and thus they had dealt in the shares of KBL on October 14, 2010 while in possession of UPSI-1.

Sub-Issue No. 1.4: *Whether Noticee No. 1 to 4 on October 14, 2010 had traded in the shares of KBL on the basis of UPSI-1?*

45. The prohibition contained in Regulation 3 of the PIT Regulations, 1992 applies also to when the insider has traded "on the basis of" any unpublished price sensitive information in addition to when the insider has traded "while in possession of" any UPSI. When it comes to imposition of monetary penalty under section 15G of SEBI Act, 1992, the requirement of dealing in securities is "on the basis of" UPSI. Therefore, violation of section 15G of SEBI Act, 1992 read with Regulation 3 of the PIT Regulations, 1992 also

requires the proof of dealing in securities "on the basis of" UPSI. However, the same is not the case in respect of passing of appropriate directions under Section 11(4), 11B(1) of SEBI Act, 1992 for violation provision of Section 12A(d) & (e) of SEBI Act, 1992 and Regulation 3 of PIT Regulations, 1992, which requires only establishing the fact of dealing in securities "while in possession of" UPSI.

46. I note, for the purpose of imposition of penalty under Section 15G of SEBI Act, 1992, the requirement is to prove that insider has traded not only "while in possession of" any UPSI but also "on the basis of" any UPSI. However, there is a presumption, albeit rebuttable, that if trading was done "while in possession of" UPSI, then it was done "on the basis of" UPSI. I note that SSCNs dated July 24, 2020 had referred to the Section 15G of SEBI Act, 1992. The allegation of trading in the shares on the basis of UPSI is embedded under Section 15G of SEBI Act, 1992. Further, I also note that Noticees made their submissions to counter that their trades were not "on the basis of" UPSI. Thus, said Noticees had understood the import of the allegation and had submitted their reply accordingly.

47. Further, Noticees had placed reliance in the matter of *Mrs. Chandrakala vs Adjudicating Officer SEBI* dated January 31, 2012 wherein Hon'ble SAT has held that the prohibition contained in Regulation 3 of the PIT Regulations, 1992 applies only when the insider has traded "on the basis of" any unpublished price sensitive information. The trades executed should be motivated by the information in the possession of the insider. Noticees had also placed reliance in the case of *Manoj Gaur vs SEBI* dated October 03, 2012, wherein the Hon'ble SAT set aside the Order of SEBI since the trading pattern in that case reflected that the trades could not be said to be "on the basis of" the alleged UPSI.

48. The burden of proof lies on the insider to prove that he has not dealt in the securities of company "on the basis of" UPSI but "on the basis of" other circumstance, as there is a presumption, albeit rebuttable, that the insider is trading on the basis of UPSI, as laid down in *Chandrakala* case.

49. Noitcee No. 1 to 4 submitted that the rationale and basis for carrying out the transaction in the shares of KBL on October 14, 2010 was that in the year 2010 a review of the shareholding was undertaken, and the family office examined internal restructuring of

holdings, and certain transfers of KBL shares were made to Mr. Sanjay Kirloskar's family and also the other family factions. The said inter se promoter transfers from Noticee No. 2 to Noticee No. 3 and from Noticee No. 4 to Noticee No. 1 were pursuant to such internal restructuring exercise undertaken by the family.

50. Upon perusal of the *Chandrakala* case and *Manoj Gaur* case, I find that facts and circumstance of both these cases are different from the present case. In the *Chandrakala* case the appellant used to trade regularly in the shares of the company and her trades were genuine transactions carried out by her in the normal course of business and her trading pattern demonstrated that the trading was not based on the unpublished price sensitive information and it was thereby held that the appellant was not in violation of Regulation 3 of PIT Regulations, 1992.

51. Further, the facts and circumstances of the *Manoj Gaur* case are that, Mrs. Urvashi Gaur and Mr. Sameer Gaur has been trading in shares not only in the scrip of the company but also in the scrip of other companies and they had traded in the scrip of the company even prior and after the publication of UPSI and during the UPSI period they had traded in very small quantity of shares. The Hon'ble SAT looking at the trading pattern and the number of shares purchased during UPSI period, held that trading was done by them not on the basis of UPSI. Thus, in the *Chandrakala* case and the *Manoj Gaur* case the Hon'ble SAT had looked into the trading pattern of entities. The trading pattern of the Noticees in present matter is not similar to the specific trading pattern of entities referred in *Chandrakala* case and *Manoj Gaur* case wherein Hon'ble SAT held that their trading was not based on the UPSI.

52. In the present matter, I note that no trading in the shares of KBL has been done by the Noticee No. 1 to 4 prior to or after the UPSI-1 becoming public; the said Noticees did not traded regularly in the shares of KBL; the said Noticees are not in the business of trading, therefore their trading is not in the normal course of their business; the transactions dated October 14, 2010 by the said Noticees in KBL shares were one-of transactions in the shares of KBL. Thus, in view of facts and circumstance of the present matter, I am of the view

that the decision of Hon'ble SAT in the matter of *Chandrakala* and *Manoj Gaur* is not applicable in the present case.

53. As regards the argument that both buyers and sellers had the same UPSIs, I note that said exemptions from violation of insider trading i.e. inter-se transfer between promoters and transactions between buyer and seller, who have the same UPSI was not available under the PIT Regulations, 1992. The same is given under the PIT Regulations, 2015 subject to certain conditions. I note that the transaction in question in the present matter happened in the year 2010 when PIT Regulation, 1992 was in effect. Upon perusal of Regulation 3 of PIT Regulations, 1992, I find that the said regulations do not exempt any inter-se transfer between promoters or transactions between buyer and seller, who have the same UPSI.

54. I am of the view that transactions between Noticee No. 1 to 4 had taken place on October 14, 2010 i.e. the time when PIT Regulation, 1992 was in force. Therefore, insider trading violations have to be determined under PIT Regulations, 1992.

55. Further I am of the opinion that the basic presumption behind permitting the trading by insiders with parity of information under the PIT Regulations, 2015 is that –

55.1. The decision makers for the transaction have parity of information AND

55.2. The decision makers are independent of each other and able to act in the interest of their respective stakeholders without any undue influence of the other party.

55.3. If any of the parties is dependent upon or under the influence/ control of the other party, then the influencing party can create disadvantage for the influenced party and its stakeholders under the pretext of parity of information.

55.4. If the same person is on both sides of the transaction, representing two different sets of stakeholders, it cannot be presumed that he would be able to act "independently" in the interest of both sets of stakeholders equally and thus one party can be disadvantaged to the benefit of the other under the pretext of parity of information.

55.5. It is not possible to accept that the intent of the regulation is to allow such mischief

56. In the case of sale of shares by Karad Projects and Motors Limited to Kirloskar Brothers Limited Employees Welfare Trust Scheme, Sanjay C Kirloskar was Trustee of the Employee Welfare Trust and Karad Projects and Motors Limited was a 100% subsidiary

of KBL, with Sanjay Kirloskar being the Chairman and Managing Director (CMD) in KBL. Sanjay Kirloskar as the Trustee cannot be said to be acting independently of Sanjay Kirloskar the CMD of KBL. Thus, the beneficial provisions of PIT Regulations, 2015 cannot be said to be applicable in this case.

57. In the case of sale of shares by Pratima Sanjay Kirloskar – Noticee No 2 to Prakar Investments Private Limited – Noticee No 3, I note that Pratima herself and her husband Sanjay Kirloskar are the owners and Directors of Prakar Investments Private Limited, Sanjay being the Chairman and Managing Director. In view of this relationship, it cannot be argued that the parties on the two sides of the trade are independent. Therefore, the beneficial provisions of PIT Regulations, 2015 cannot be envisaged in this case either.

58. In respect of Noticees No. 1 to 4 decision to trade in KBL shares, they have submitted that the same has been done on the basis of the internal restructuring of holdings within the family. The promoters of KBL (Noitcee No. 2 & 4) sold shares to other promoter (Noticee No. 3 & 1) as part of internal family restructuring holdings. I specifically note the pattern of trading, the execution of the trade, buyer and seller both being part of the Promoter group, sellers selling at the same time at the same price. I note that, even though there is no documentary evidence of this internal family restructuring, on a preponderance of probability basis, there appears to be such an intent to consolidate family holdings, the trades themselves on October 14, 2010, were done on this basis. Thus, I am of the view that there is some doubt whether the Noticee No. 1 to 4 had traded on the basis of the UPSI-1.

59. Thus, in view of the facts and circumstance of the present matter, including the pattern of trading by Noticee No. 1 to 4, I am of the view that the said Noticees have been able to effectively rebut the presumption that their trades were on the basis of UPSI-1. In the instant case, due to circumstantial evidence of a internal family restructuring which can also be a basis for transactions, it is difficult to conclude, on preponderance of probability basis, that the dealing in securities by Noticee No. No. 1 to 4 was on the basis of UPSI of capital loss. Thus, I am inclined to give the benefit of doubt to Noticee No. 1 to 4 that the

execution of trade on October 14, 2010 in KBL shares was probably not on the basis of UPSI-1.

60. In view of the foregoing, I am of the view that on October 14, 2010, Noticee No. 1 to 4 had traded in the shares of KBL while in possession of UPSI-1 and thereby violated the provisions Section 12A (d) and (e) of SEBI Act, 1992 and provisions of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 as alleged in the respective SCN. Thus, the allegation of violation of provisions Section 12A(d) and (e) of SEBI Act, 1992 and provisions of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 against Noticee No. 1 to 4 stands established. However, in respect of the allegation that the Noticee No. 1 to 4 had traded 'on the basis of' UPSI-1 on October 14, 2010, the benefit of doubt is being extended to them.

Sub-Issue No. 1.5: *Whether information of financial results of KBL for quarter July – September 2010 was price sensitive information in terms of Regulation 2(ha) of PIT Regulations, 1992; and was unpublished for the period August 06, 2010 to October 28, 2010 in terms of Regulation 2(k) of PIT Regulations, 1992; and Whether Noticee No. 1 to 4 were in possession of said information on October 14, 2010 and thereby traded in the shares of KBL on October 14, 2010 while in possession of as well as on the basis of said information?*

61. I note that the second PSI that has been alleged in the SCN is information of financial results of KBL for the quarter July-September 2010 (hereinafter referred to as **"UPSI-2**") under Regulation 2(ha) of PIT Regulations, 1992. The said PSI has been alleged for the period August 06, 2010 (date of KG-MOB report for July 2010) to October 28, 2010 (date of announcement of financial results of September 2010 quarter) (hereinafter referred to as **"UPSI Period-2**").

62. It is alleged in the SCN that the financial position of KBL in September 2010 had deteriorated both on monthly and quarterly basis in comparison with previous year month and quarter respectively on the following grounds:

62.1. The total income for the month of July, 2010 increased to Rs.142.0 crore from Rs.122.8 crore in July 2009 i.e. an increase of Rs.19.2 crore (or 15.63%). However, in the same period, PAT decreased to Rs.18.0 crore (July 2010) from Rs.31.0 crore (July 2009) i.e. a decrease of Rs.13 crore (i.e.-41.94%).

62.2. The total income for the month of August, 2010 decreased to Rs.149.10 crore from Rs.277.10 crore in August 2009 i.e. a decrease of Rs.128.0 crore (i.e.-46.19%). In the same period, PAT decreased to Rs.11.1 (August 2010) crore from Rs.22.9 crore (August 2009) i.e. a decrease of Rs.11.8 crore (i.e.-51.53%)

62.3. The operating income during quarter ended September 30, 2010 decreased to Rs.447.93 crore from Rs.552.64 crore in the quarter ended September 30, 2009 i.e. a decrease of Rs.104.71 crore (i.e.-18.95%). In the same period, Profit After Tax (PAT) also decreased to Rs.19.49 (quarter ended September 30, 2010) crore from Rs.33.14 crore (quarter ended September 30, 2009) i.e. a decrease of Rs.13.65 crore (i.e.-41.19%).

63. From the submissions of the Noticees, I note that they have neither contended that information of financial results of KBL for the quarter July-September 2010 was not price sensitive information nor made any submissions in that regard. Upon perusal of documents available on record, I note the transactions in the shares of KBL took place on October 14, 2010 and for the purpose of determining whether the insiders traded in the shares of KBL while in possession of and on the basis of UPSI-2, the relevant date is October 14, 2010.

64. Further, with regard to the UPSI-2, I find that SCNs has alleged that KG-MOB reports for the months of July, August and September 2010 were relevant documents for the preparation of Financial Results of KBL for quarter July – September 2010.

65. I have already noted that "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of the company. Several price sensitive pieces of information relating to the financials of the company may arise prior to the publication of the financial results. At the stage of publication, several price sensitive pieces of information relating to the financial condition of the company are integrated and published as quarterly results

which in itself is deemed to be price sensitive information. Any particular piece of price sensitive information, after its origin, may be in possession of various persons for legitimate purpose; the publication of such PSI may happen only after a period of time but it does not take away the fact that the pieces of information may be price sensitive on their own, even while they are unpublished in the form of periodic financial results. It is for these reasons that Promoters / Directors are often referred to as "perpetual insiders" because they have continuous access to flow of information that has a bearing on the periodic financial results disclosed to the public.

66. In the present matter, upon perusal of the KG-MOB Report for the month of July 2010 dated August 06, 2010; KG-MOB Report for the month of August 2010 dated September 03, 2010 and for the month of September 2010 dated October 11, 2010, I find that the said KG-MOB Reports reflect financial information and financial data for the month of July, August and September 2010 such as:

- Balance Sheet,
- Profit & Loss,
- Growth over PY actual,
- Fixed cost analysis,
- Fund Flow statement,
- Cash Generation statement,
- Capital Market Investment,
- Key Financials Ratio,
- Sales figures,
- Manufacturing expenses,
- Borrowing,
- Receivables,
- Inventories,
- Capital Expenditure,
- Net Current Assets etc.

67. Thus, I am of the view that the said KG-MOB reports are fairly detailed financial reports of KBL which contained many financial figures and data for the month of July, August and September 2010. Of course it would need to be determined whether the particular financial information is price sensitive or not. The test would be whether any such financial information, if published, has the likelihood of affecting the price of the shares. Therefore, given the highly detailed as well as comprehensive set of financial information contained in the KG-MOB reports, I am of the view, that in the instant case, information contributing to preparation of Financials for July – September 2010 arose (albeit in parts) on August 06, 2010, September 03, 2010 and October 11, 2010.

68. Further, I note that the agenda for the board meeting held on October 28, 2010 alongwith the financials of KBL for quarter ended September 30, 2010 was shared with the Board of Directors of KBL on October 20, 2010 and financials of KBL for quarter and half year ended September 30, 2010 were published on BSE and NSE on October 28, 2010.

69. Thus, I find that the information in the KG-MOB reports, on account of being both detailed and comprehensive, was related to and reflective of and had a bearing on financial performance for July-September 2010 quarter, and thus was indeed price sensitive information and remained unpublished till October 28, 2010. Thus, information related to financial results of KBL for the quarter July-September 2010 (***UPSI-2***) was unpublished for the period August 06, 2010 to October 28, 2010 (***UPSI Period-2***) in terms of Regulation 2(k) of PIT Regulations, 1992.

70. In the present case and in the context of the trading on October 14, 2010 while in possession of UPSI-2, I note that financial results of a company are sensitive information. Upon perusal of PIT Regulation, 1992, in law, if it is only to make a determination of trading while in the possession of UPSI, then it need not be examined whether the financial information in the hands of the insiders was reflecting deteriorating financials or improving financials. Therefore, I am of the view that it is adequate to determine whether financial information (deteriorating or otherwise) existed and whether it was in the possession of insiders or not at the time when they had traded.

71. In the present case, with regard to the possession of UPSI-2, from the documents available on record, I note that KG-MOB Reports which reflected / and had a bearing on KBL financials for the month of July 2010, August 2010 and September 2010 were shared with Sanjay on August 06, 2010, September 03, 2010 and October 11, 2010 respectively. In this regard, I note that Sanjay have not denied that he was in possession of the KG-MOB reports for the month of July 2010 on August 06, 2010; for the month of August 2010 on September 03, 2010 and for the month of September 2010 on October 11, 2010. Further, I have already determined in sub-issue 1.1 above that Noticee No. 1 to 4 were insiders, connected to each other and to KBL. Thus, in view of the same, I note that Noticee No. 1 to 4 were in possession of UPSI-2 on October 14, 2010 to the extent of detailed financial information related to July 2010,August 2010 and September 2010, which had a bearing on, and were reflective of the financial results for July – September 2010 quarter. Thus, Noticee No. 2 & 4 had sold the shares of KBL and Noticee No. 1 & 3 had bought the shares of KBL on October 14, 2010 while in possession of such UPSI-2.

72. Further, in the present case and in the context of the trading by Noticee No. 1 to 4 on October 14, 2010 on the basis of UPSI-2, the finding mentioned at sub-issue 1.4 above shall apply here as well.

73. ***Amount of unlawful gains / loss avoided:***

Estimation of impact of UPSI on share price in the context of (a) long UPSI period and (b) UPSI being related to one time loss or gain:

73.1. The SCN alleges that Noticee No. 2 & 4 by trading in the shares of KBL while in possession of UPSI-1, had made unlawful gains / loss avoided. The calculation of unlawful gains earned / loss avoided by the Noticee No. 2 & 4 as alleged in SCN is as under:

Table No. 10

Sl. No.	Name	No of Shares Sold	Weighted average sale Price (Rs.)	Closing price on April 27, 2011 (Rs.) **	Unlawful Gain (Rs.) *
1	Pratima Sanjay Kirloskar – Notcee No 2	1,42,700	244.50	178.30	94,46,740.00

2	Karad Projects and Motors Ltd. (Formerly Hematic Motors Pvt. Ltd.) – Noticee No. 4	78,750	244.50	178.30	52,13,250.00

** Basis of calculation-*

(No of shares sold when in possession of UPSI X weighted average sale price) – (No. of shares sold when in possession of UPSI X Closing price on the day of UPSI becoming public)

*** The announcement of the financial results for the quarter and year ended on March 31, 2011, in which advances given to KCEL was written-off (capital loss) was published on April 26, 2011 at 16:28 Hrs on BSE and at 16:15 Hrs on NSE. The closing price of scrip on April 27, 2011 i.e. Rs.178.30 at BSE is considered for computation of wrongful gains.*

73.2. With regard to the disgorgement, Noticees submitted that since the primary allegation of violating Regulation 3 of PIT Regulations 1992 does not arise, no direction can be issued by SEBI in exercise of its powers under Section 11 and 11B of the SEBI Act including the disgorgement of any amount. The transactions in question are private inter se transfers, between the insiders/promoters and there is no public interest involved, hence, there is no question of one party having made any wrongful/ illegal profits/gains or avoided losses at the expense of the counter party.

73.3. In this regard, I find that the Regulation 3 of PIT Regulations, 1992 do not exempt any inter-se transfer between promoters or transactions between buyer and seller, who have the same UPSI and the allegation of violation of Regulation 3 of PIT Regulations, 1992 by Noticee No. 1 to 4 is already established above. Hence, I do not find any merit in the said contention of the Noticees. Therefore, I am of the view that SEBI in exercise of its powers under Section 11 and 11B of the SEBI Act can issue any direction including the disgorgement of any amount for said violations.

73.4. However, it is noted that Noticee No. 2 & 4 had sold KBL shares on October 14, 2010 and information regarding Capital loss of the investment / advances given to the KCEL through writing off the loan / advances to the tune of Rs. 67.47 crore given to KCEL by KBL has been published on April 26, 2011. The price of the KBL shares on October 14, 2010 was Rs. 244.50 and on April 26, 2011 was Rs. 154. In this context, it is relevant to note that observation of *Karvy Stock Broking Ltd. vs. SEBI* made by Hon'ble SAT in its decision dated May 5, 2008 to the effect that disgorgement amount can be calculated on the basis of reasonable approximation. Hon'ble SAT in the said order further observed that *Disgorgement is a monetary*

equitable remedy that is designed to prevent a wrongdoer from unjustly enriching himself as a result of his illegal conduct.

73.5. The allegation in the SCN for the calculation of loss avoided or unlawful/ill-gotten gain takes into account weighted average selling price on the date of sale and the closing price on the date of publication of the UPSI. In this regard, I note that the time difference between the two dates is approximately 6 months which is quite long. During this time, apart from the impact of UPSI-1 and UPSI-2 on the price of KBL shares, following amongst many others, may also be the factors which could results in the decline of price of KBL shares from Rs. 244 on October 14, 2010 to Rs. 154 on April 26, 2011.

- Macro-economic factors at the level of the Indian economy;
- Global and Domestic flows at the market level;
- Sectorial news flow;
- Various corporate announcements made by KBL during the 6 month period etc.

73.6. I also note that the price of KBL shares had fallen to Rs. 115.25 on March 16, 2011, i.e. well before April 26, 2011. Thus, I am of the view that the entire decline in the KBL share price over a long period of 7 months cannot reasonably be attributed predominantly to the UPSI-1. Therefore, in respect of the method adopted in the SCN for calculation of the avoidance of loss, I am of the considered view that the computation methodology in the SCN does not satisfy the requirement of reasonable approximation of the amount to be disgorged. Therefore, in view of the facts and circumstance of this case and the documents available on records, I am of the view, that using the computational methodology mentioned in the SCN, would not be appropriate to reach a reasonable approximation of loss avoided or unlawful/ill-gotten gains made by the Noticee No. 2 & 4. Therefore, the question that arises is what would be a reasonable approximation of the unlawful gain/ loss avoided by the Noticee No. 2 & 4. This would involve "valuation" of KBL with and without the UPSI, assuming that the two are proximate to each other.

73.7. Before taking that up, I first take the liberty of drawing a broad analogy in respect of "valuation".

73.7.1. It may be assumed that Mr. X has bought a house at a value of Rs. 100 lacs with a bank loan of Rs. 75 lacs and his own funds (equity) of Rs 25 lacs. Assume that he has to pay interest on the loan @ 10% per annum for 15 years.

73.7.2. It may further be assumed that 2 months later, there is a fire in the house and a part of it is destroyed. Assume that, the cost of restoring the house to original status is Rs 10 lacs. As Mr. X did not take a fire insurance, assumes that he has to take an additional loan of Rs 10 lacs (to be paid at the end of 15 years) to carry out the repair.

73.7.3. In the Balance Sheet of Mr. X, what this means is that:

73.7.3.1. His asset of Rs 100 lacs first comes down by Rs 10 lacs (capital loss).

73.7.3.2. His liabilities remain at Rs 75 lacs of loan. His equity comes down by Rs 10 lacs to Rs 15 lacs.

73.7.3.3. In order to be able to live in the house again, Mr. X has to borrow a further Rs 10 lacs in addition to the outstanding loan of Rs 75 lacs, in order to restore the house.

73.7.3.4. After the repairs, the value of the house goes back to Rs 100 lacs.

73.7.3.5. But the liabilities become: Loan of Rs 85 lacs and equity of Rs 15 lacs.

73.7.3.6. In other words, the entire loss of Rs 10 lacs is to the account of the equity of Mr X. and this is reflected in his liability to the bank increasing by Rs 10 lacs

73.7.4. In the Profit and Loss of Mr X, what this means is that:

73.7.4.1. Originally he was to pay interest on the loan amount of Rs 75 lacs @10% i.e. Rs 7.5 lacs pa.

73.7.4.2. After the restoration, he now has to pay interest on the loan amount of Rs 85 lacs @ 10% i.e. Rs 8.5 lacs pa.

73.7.4.3. In other words, he has a recurring additional expense of Rs 1 lac per annum.

73.7.4.4. Thus over a period of 15 years of the loan, he will pay an extra Rs 15 lacs.

73.7.5. In other words, the " total loss of value" to Mr. X on account of the fire is the Rs 10 lacs extra loan that he will have to repay to the bank, plus, the extra Rs 15 lacs of interest that he will have to pay to the bank i.e. a total of Rs 25 lacs. It is of course, to be noted that the total of Rs 25 lacs is to be paid over a period of time, and therefore, the present value of loss would be lower.

73.7.6. Let also be assume that the bank agreed to make Mr. X's loan a life long loan and assume that Mr. X lived a long long time. The present value of the principal repayment would be very low low enough to be ignored and so the total effective loss of value to Mr. X would be a recurring cost of the increase in interest of Rs 1 lac per annum life long.

73.8. Similarly, in the present case, in order to make a reasonable approximation of the unlawful gain/loss avoided by the Noticee No. 2 and 4 in the peculiar set of facts and circumstances that present themselves in this case, I note the following :

73.8.1. KBL had made an investment/ advances of Rs 148 Crore in KCEL as per the Note dated March 08, 2010. (equivalent to the value of the house of Mr X of Rs 100 lacs)

73.8.2. The capital loss on this investment/ advances to KBL was estimated at Rs 53-Rs 58 Crore as per Note dated March 08, 2010 (take the midpoint value of Rs 55.5 Crore) (equivalent to the loss on account of the fire in the house, of Rs 10 lacs)

73.8.3. In order to maintain the expected revenues and profits of KBL (equivalent to Mr. X being able to continue to live in the house), KBL would have to restore the asset (equivalent to repairing the house) by borrowing an additional 55.5 Crore (equivalent to Mr. X taking an additional loan of Rs 10 lacs)

73.8.4. The average cost of borrowing for KBL was approximately 10% per annum (as per the Annual Report for FY 2009-2010) (Similar to Mr X's cost of borrowing of 10% per annum)

73.8.5. Thus, KBL would incur additional interest cost of Rs 5.55 Crore per annum (equivalent to Mr X paying Rs 1 lac per annum).

73.8.6. KBL was a ongoing concern and it can be assumed that the loan was "life long". Thus the impact of the loss was almost fully captured through the "recurring loss" of Rs 5.55 Crore per annum life long.

73.8.7. However, the capital loss on investment/advance given to KCEL which was estimated between Rs 53 Crore and Rs 58 Crore in March 2010 by the time the impugned transactions took place, i.e. on October 14, 2010, the estimate of the capital loss had increased to Rs 84.96 Cr as per the viability report considered by the Board of KBL on September 03, 2010.

73.8.8. Thus, before the impugned trades happened on October 14, 2010, if the capital loss had been made public, the amount of Rs 84.96 Cr would have been made public and would have had the related impact on the share price of KBL through a recurring loss of Rs. 8.49 crore per annum life long.

73.8.9. In the financial world, such a recurring cost to the company would be "valued" at the Price to Earnings Multiple (P/E).

73.8.10. P/E ratio calculation:

73.8.10.1. The impugned transaction took place on October 14, 2010, therefore, the computation of P/E ratio has to be of that date. It may be noted that Trailing Twelve Month (**TTM**) Ratio has been commonly used by the market which is to be computed.

73.8.10.2. As on October 14, 2010, the quarterly results for the quarter ended September 30, 2010 were not in public domain. The latest results in public domain were for the quarter ended June 30, 2010. Thus, financial results from July 1, 2009 to June 30, 2010 results should be used. I note that the PAT for the relevant 4 quarters was:

73.8.10.2.1. Quarter ended September 30, 2009:Rs 33.13 Crore

73.8.10.2.2. Quarter ended December 31, 2009: Rs 20.34 Crore

73.8.10.2.3. Quarter ended March 31, 2010: Rs 58.44 Crore including Rs 22.48 Crore one-time profit

73.8.10.2.4. Quarter ended June 30, 2010: Rs 4.46 Crore

73.8.10.3. Thus, total trailing twelve month PAT was Rs 116.37 Crore including Rs 22.48 Crore one time profit.

73.8.10.4. The market does not value one-time profit at the P/E ratio. Only sustainable profit/recurring profit is valued at the said ratio. Thus, it becomes important to convert the one time profit into its equivalent "recurring benefit", as outlined below:

73.8.10.4.1. Cash generated from the one-time sale of investments = Rs 22.48 Crore. Making a reasonable assumption of tax @ 10% on long term capital gains, net cash generated would be approx. Rs 20.2 Crore.

73.8.10.4.2. Average interest cost of KBL = interest for the year/ average debt during the year i.e. Rs 33.5 Crore / ((Rs. 357 Crore + Rs 320 Crore)/2) = 9.9 % or approximately 10%

73.8.10.4.3. Thus, if KBL were to repay borrowings to the extent of Rs 20.2 Crore using the net cash generated from the one-time sale of investments, it could save approximately Rs 2.02 Crore every year on a gross basis and thus increase its profits on a PBT basis by Rs 2.02 Crore. KBL paid approximately 32% tax in the FY 2009-2010. Thus, increase in profit on a PAT basis would be Rs 1.38 Crore per annum. The dividend lost on investments sold would be Rs 2.40 Crore

73.8.10.4.4. This sustainable PAT = Rs 116.37 Crore – Rs 20.2 Crore – Rs. 2.4 Crore + Rs 1.38 Crore = Rs 95.1 Crore.

73.8.10.4.5. Since KBL had 7.93 Crore shares outstanding, the sustainable PAT per share would be Rs 12.

73.8.10.4.6. The market price of KBL shares on October 14, 2010 was Rs 244. Thus, the implied P/E ratio that the market was valuing KBL at was Rs 244 / Rs 12 i.e. 20.3.

73.8.11. For easy reference, the aforesaid calculation is tabulated below in detail:

Table No. 11

Trailing Twelve Month (TTM) ended June 30, 2010				
		PAT in Rs Cr		
Q ended sept 2009	A	33.13		
Q ended dec 2009	B	20.34		
Q ended mar 2010	C	58.44	including one time profit of Rs 22.48 Crore	
Q ended jun 2010	D	4.46		
Total TTM	E	116.37		E=A+B+C+D
PAT	E	116.37		
One time profit in march quarter	F	22.48		
Tax @10 % (assuming long term investment)	G	2.25	10%	
One time profit on PAT basis	H	20.2		H=F-G
Interest saving (recurring benefit) pre tax (@10 %)	I	2.02	10%	
Tax rate	J	32%		
Recurring benefit post tax	K	1.38	per annum	
Dividend lost on investments sold	L	2.40	Crore	
Recurring PAT	M	95.1	Crore	M=E-H-L+K
Number of shares	N	7.93	Crore	
Recurring PAT per share	O	12.0		O=M/N
Share price	P	244	on 14.10.2010	
P/E	Q	20.3		Q=P/O
Capital loss (KCEL related) estimate increased from March 2010 (Rs 55.5 Cr) to Sept 3, 2010 (84.96 Cr)	R	84.96	Crore	
Recurring impact on PBT (interest on additional borrowing)	S	8.50	Crore	S=10%*R
Tax benefit	T	2.72	Crore	T=S*J
Recurring impact on PAT	U	5.78	Crore	U=S-T
Recurring impact on PAT per share	V	0.73	Rs	V=U/N
Impact on value per share (based on P/E)	W	14.8	Rs/share	W=V*Q
Total number of shares traded	X	2,21,450		
loss avoided (in Rs.)	Y	32.77	lacs	Y=X*W

73.8.12. Thus, from the above table the valuation of loss would be Rs 14.8/- per shares.

73.9. While financial experts may offer refinements to the above logic, in my opinion, the same is reasonable and thus, a reasonable approximation of the notional loss avoided / unlawful gains made by the Noticee No. 2 & 4 by selling the KBL shares on October 14, 2010 which is approximately Rs. 32,77,460/-. The details in this regard is mentioned below:

Table No. 12

Sl. No.	Name	No of Shares Sold	Unlawful / illegal loss avoided per share (Rs.)	Notional Unlawful / illgoten Gain (Rs.) *
1	Pratima Sanjay Kirloskar – Notcee No 2	1,42,700	14.8	**21,11,960**
2	Karad Projects and Motors Ltd. (Formerly Hematic Motors Pvt. Ltd.) – Noticee No. 4	78,750	14.8	**11,65,500**
	Total			**32,77,460**

** Basis of calculation of unlawful loss avoided = (No. of shares sold when in possession of UPSI X unlawful / illegal loss avoided per shares as per abovementioned calculation)*

ISSUE No. 3: ***Whether Noticee No. 1 and 2 had violated clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of PIT Regulations 1992 as alleged in the SCN?***

74. From the documents available on record, I note that Noticee No. 1 and 2 vide letters dated October 12, 2010, has sought pre-clearance from KBL while giving a declaration that they have no access to Unpublished Price Sensitive Information upto the signing of this undertaking. I note that the said Noticee No.2 had not disputed that said letter / undertaking dated October 12, 2010 rather had submitted that said pre-clearance was sought when she was not in possession on any UPSI at that time and when trading window was open. I also note that the said Noticee No.1 had not disputed that said letter / undertaking dated October 12, 2010 rather had submitted that Noticee No. 1, was on both sides of the transaction

between Noticee No. 4 and Noticee No.1, and as the CMD he is always in possession of all information about the KBL and said pre-clearance was sought when trading window was open.

75. As I have already determined in detail in the previous paragraphs that Noticee No. 1 & 2 were in possession of UPSI-1 and UPSI-2 when they had applied for pre-clearances on October 12, 2010 i.e. prior to the transaction dated October 14, 2010.

76. In respect of the pre-clearance, it was argued by the Noticee No. 1 and 2, that the trades were done while the trading window was open and trades were done with the persons having the same UPSI. The said argument has no relevance on the allegation of whether pre-clearance with the true undertaking was made and obtained. What is relevant in the instant case for determination of violation of code of conduct relating to pre-clearance is whether the said application for pre-clearance was made at time when the applicant does not have the UPSI and an undertaking to that effect was given for application to get the pre-clearance. As already observed, the Noticee No. 1 and 2 was in possession of UPSI at time of undertaking and hence the undertaking is false. The objective behind the pre-clearance is transaction beyond a certain threshold should not be executed by directors/officers/designated employees even when the trading window was open unless they get the pre-clearance. The requirement is not dispensed with just because the counterparties to the trade has the same UPSI.

77. Thus, I am of the view that Noticee No. 1 and 2 had submitted incorrect declarations / undertakings dated October 12, 2010 to KBL while obtaining pre-clearances for transaction dated October 14, 2010 and therefore, violated Part A, of clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of PIT Regulations 1992. Hence, the violation of provisions of Part A, of clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of PIT Regulations 1992 against Noticee No. 1 and 2 stands established.

ISSUE No.3: If issue No. 1 and 2 is determined in affirmative in full or in part, then what directions including disgorgement under Sections 11(1), 11(4), 11B(1) of SEBI Act, 1992 and / or monetary penalty under Sections 15G and 15HB of SEBI Act, 1992 should be issued / imposed against the Noticee No. 1 to 4 for their respective violations?

78. I note that Noticee No. 2 & 4, by trading in the shares of KBL, while in possession of UPSI-1, had made notional unlawful gains / avoided loss. The calculation of notional unlawful gains earned / loss avoided by the Noticee No. 2 & 4 is detailed at Paragraph 73 above. The amount of notional unlawful gains made / loss avoided by Noticee No. 2 & 4 is liable to be disgorged and the same is as under:

Table No. 13

Noticee No.	Noticee Name	Unlawful / ill-gotten Gain (Rs.)
2	Pratima Sanjay Kirloskar	**21,11,960**
4	Karad Projects and Motors Ltd. (Formerly Hematic Motors Pvt. Ltd.)	**11,65,500**
	Total	**32,77,460**

79. In respect of violation of code of conduct, I note that the Hon'ble Supreme Court of India in the matter of *The Chairman, Sebi vs Shriram Mutual Fund & Anr* decided on 23 May, 2006 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 Regulation 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.....Hence once the contravention is established then the penalty is to follow".*

80. The provisions of Section 15HB of SEBI Act, 1992 as applicable at the time of transaction dated October 14, 2010 are as under:

Penalty for contravention where no separate penalty has been provided.

15HB. *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.*

81. Thus, in view of above Hon'ble Supreme Court order read with provisions of Section 15HB of SEBI Act, 1992, I am of the view that Noticee No. 1 & 2 are liable for monetary penalty for their violations as established herein. In this regard, I note that Noticee No. 1 and 2 had submitted incorrect declarations / undertakings dated October 12, 2010 by stating that they are not in possession of UPSI-1 to KBL while obtaining pre-clearances for transaction executed on October 14, 2010 and thereby, violated Part A, of clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, specified in Regulation 12(1) of PIT Regulations 1992. The violation of the said provisions of PIT Regulations, 1992 by Noticee No. 1 and 2 attracts imposition of monetary penalty under section 15HB of SEBI Act on them.

82. Thus, in view of the findings above, I am of the considered view that, the aforesaid violations by the Noticees No. 1 and 2 make them liable for penalty under following Sections of SEBI Act, 1992:

Table No. 14

Sr. No.	Penalty Section under SEBI Act	Violation of SEBI Act/Rules/Regulations	Noticee Name	Noticee No.
1	Section 15HB of SEBI Act, 1992	For violation of Part A, clause 3.3 of Schedule 1 i.e. Model Code of Conduct for Prevention of Insider Trading, under Regulation 12(1) of PIT Regulations 1992, r/w Regulation 12(2) of PIT Regulations 2015.	Sanjay Kirloskar	Noticee No. 1
			Pratima Kirloskar	Noticee No. 2

83. While adjudging the quantum of penalty I may refer to the judgment of the Hon'ble Supreme Court in *Adjudicating officer, SEBI vs. Bhavesh Pabari* decided on February 28, 2019, wherein it is stated that *"...Section 15J of the SEBI Act enumerates by way of*

illustration(s) the factors which the Adjudicating Officer should take into consideration for determining the quantum of penalty imposable. The imposition of penalty depends upon satisfaction of the substantive provisions as contained in Sections 15A to Section 15HA of the SEBI Act…"

84. I note that the following illustrative factors are mentioned under Section 15J of SEBI Act, 1992 for adjudging the quantum of the penalty:

"15J - Factors to be taken into account while adjudging quantum of penalty

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."

85. In respect of whether these factors have to be mandatorily considered at the time of adjudging the penalty the Hon'ble Supreme court in the *Adjudicating officer, SEBI vs. Bhavesh Pabari* observed that *"…At this stage, we must also deal with and reject the argument raised by some of the private appellants that the conditions stipulated in clauses (a) to (c) of Section 15J are mandatory conditions which must be read into Sections 15A to 15HA in the sense that unless the conditions specified in clauses (a) to (c) are satisfied, penalty cannot be imposed by the Adjudicating Officer under the substantive provisions of Sections 15A to 15HA of the SEBI Act."* The Hon'ble Supreme court further observed that "*….We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty…"*

86. In view of the above discussion, I have considered the following factors for adjudging the quantum of penalty in the instant matter.

86.1. The amount of disproportionate gain i.e. unlawful / ill-gotten gains / loss avoided by Noticee No. 2 has been quantified and detailed at paragraph 73 above.

86.2. There is nothing on record to show that the default by the Noticee No. 1 and 2 was repetitive in nature.

86.3. However, I also take note of the circumstantial evidence of inter family restructuring and long passage of time from the date of transaction as a factor of mitigation for adjudging the quantum of penalty.

87. In view of the findings above, I am of the considered view that under Sections 11(1), 11 (4) and 11B(1) of the SEBI Act, 1992, for the violation of provisions Section 12A (d) & (e) of SEBI Act, 1992 and Regulations 3(i) and 4 of PIT Regulations, 1992, r/w Regulation 12(2) of PIT Regulations 2015, Noticee No. 2 & 4 are liable for disgorgement of unlawful / ill-gotten gains made by them (as detailed at paragraph 78) and Noticee No. 1 to 4 should be restrained for a suitable period of time.

88. The details of monetary penalty and disgorgement amount is as under:

Table No. 15

Noticee No. (A)	**Noticee Name (B)**	**Penalty section under SEBI Act (C)**	**Penalty Amount in Rs (D)**	**Disgorgement amount in Rs (E)***	**Total in Rs. (D +E) = (F)**
Noticee No. 1	Sanjay Kirloskar, Trustee of Kirloskar Brothers Ltd. Employees Welfare Trust Scheme	Section 15HB	**5,00,000**	**-**	**5,00,000**
Noticee No. 2	Pratima Sanjay Kirloskar	Section 15HB	**5,00,000**	**21,11,960**	**26,11,960**
Noticee No. 3	Prakar Investments Pvt. Ltd.	-	**No Penalty**	**-**	**-**
Noticee No. 4	Karad Projects and Motors Ltd.	-	**No Penalty**	**11,65,500**	**11,65,500**
Total					**42,77,460**

** Disgorgement amount is the base amount. Simple interest at 4% p.a. is to be paid additionally to be calculated from October 14, 2010 till the date of payment within 45 days from the date of service of this order.

89. With regard to the applicability of interest on unlawful / ill-gotten gains, it is relevant to refer the judgment of Hon'ble Supreme Court in Civil Appeal No. 5677 of 2017 in the matter of Dushyant N. Dalal and Others Vs. SEBI dated October 04, 2017 where it is held that: *"….. We are of the view that an examination of the Interest Act, 1978 would clearly establish that interest can be granted in equity for causes of action from the date on which such cause of action arose till the date of institution of proceedings……. It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as the SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity…"*

90. I note that under Section 11(1) of SEBI Act, in the interest of investor and to promote the development of and to regulate the securities market, SEBI is empowered to take such measures as it deems fit to protect the interest of investors. Hence, I am of the view that SEBI is empowered to levy interest. Further, in view of the above judgment of Hon'ble Supreme Court, SEBI has the power to impose interest on unlawful gains from the date of arising of cause of action till the date of payment. In the present case, I note that the date of cause of action i.e. date of transaction was of October 14, 2010. Thus, considering long passage of time since the date of transaction, I am of the view that the quantum of interest imposed on the unlawful gains made by Noticee No. 2 & 4 may be reduced from normal rate of interest to 4% per annum simple interest from October 14, 2010 till the date of expiry of period prescribed for disgorgement under this order. In case of failure to pay the disgorgement amount within the said prescribed period, interest at the rate of 12% per annum shall be liable to be paid for the remaining period.

91. I also note that Hon'ble Supreme Court in *N Narayanan vs Adjudicating Officer, Sebi dated April 26, 2013* had made reference to word of caution for the defaulters that *"SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market.*

Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market's integrity".

ORDER

92. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11B(1), 11B(2) and 11(4A) read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby issue following directions and impose following penalty:

92.1. Noticee No. 1 to 4 shall not buy, sell or otherwise deal in shares in any manner whatsoever for a period of 3 (three) month from the date of this order.

92.2. Noticee No. 2 and 4 shall individually, disgorge an amount as ascertained in Column E of Table No. 15 above along with simple interest calculated at the rate of 4% per annum from October 14, 2010 till the date of payment within 45 days from the date of service of this order, subject to paragraph 93 below. In case of failure to pay the disgorgement amount within 45 days from the date of service of this order (subject to paragraph 93 below), interest at the rate of 12% per annum shall be applicable for the period, starting from the end of 45 days from the date of service of this order (subject to paragraph 93 below), till the date of payment.

92.3. Noticee No. 1 and 2 are directed to pay the monetary penalty as mentioned against their respective names in Column D of the Table No. 15 individually within 45 (forty five) days from the date of service of this order by way of crossed demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai or by e-payment* to SEBI account as detailed below.

Name of the Bank	Branch Name	RTGS Code	Beneficiary Name	Beneficiary Account No.
Bank of India	Bandra Kurla Branch	BKID 0000122	Securities and Exchange Board of India	012210210000008

** Noticees who are making e- payment are advised to forward the details and confirmation of the payments so made to the Enforcement department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 09, 2016 which is reproduced as under:*

1. Case Name:	
2. Name of the payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7. Paymentismadefor:(like penalties/disgorgement/recovery/settlement amount and legal charges along with order details:	

92.4. Subject to para 93, Each of the entities mentioned at Column "A" of the Table No. 15 shall pay, in the escrow account:

92.4.1. a sum equal to amount mentioned in Column "F" of Table No. 15; and

92.4.2. Interest on the amount at column "E" of Table No. 15 calculated at simple interest at 4% per annum from October 14, 2010 till the date of payment within 45 days from the date of service of this order; and

92.4.3. The entities mentioned at Column "A" of the Table No. 15 pay the said amount from the "escrow account" to SEBI within 45 days from the date of service of this order in the modes mentioned in the order in compliance of directions at paragraphs 92.2 and 92.3.

92.5. Noticees No. 1 to 4 are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

92.6. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT →Orders →Orders of Chairman/Members → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html and selecting Type of Category as 11B orders.

93. As noted earlier in the facts and circumstance of the case, the computational methodology mentioned in the SCN, would not be appropriate to reach a reasonable approximation of loss avoided or unlawful/ill-gotten gains made by the Noticee No. 2 and 4. Therefore, the notional unlawful loss avoided has been arrived at using a different computational methodology. Therefore, the directions against Noticee No. 2 and 4 in respect of their liability to disgorge the amounts as mentioned in Column E of the Table No. 15 of this order, is made contingent on SEBI serving this order to Noticee No. 2 and 4. Therefore, paragraph 92.2 of this order will take effect as final order against Noticee No. 2 and 4 only on the expiry of 60 days from the date of service of this order on them unless Noticee No. 2 and 4 file reply or seek, by a written request, personal hearing only in respect of amount as mentioned in Column E of the Table No. 15 of this order, receivable by SEBI within such period of 60 days from the date of service of this order. If reply / request for personal hearing is filed by Noticee No. 2 and 4, the directions mentioned in paragraph 92.2 against Noticee No. 2 and 4 shall be made applicable subject to the determination on the objections/reply.

94. The banks where the aforesaid entities mentioned at Column "A" of the Table No. 15 are holding bank accounts, jointly or severally, are directed to ensure that, except for compliance of direction mentioned at paragraph 92.4.3, no debits are made in the said bank accounts. The banks are directed to ensure that these directions are strictly enforced.

95. On production of proof of deposit of the entire amount mentioned at paragraph 92.4.3, SEBI shall communicate to the banks to defreeze the "debit" in the bank of the respective entities mentioned Table No. 15.

96. If there is a failure to pay the said amount mentioned at Column F of Table No. 15, SEBI, within the period mentioned (subject to paragraph 93), SEBI may recover such amounts, from Noticees as per applicable law.

97. The order shall come into force with immediate effect subject to paragraph 93.

98. A copy of this order shall be served upon all the Noticees, Stock Exchanges, Registrar to Transfer Agents, Banks and Depositories, for necessary action and compliance with the above directions

Sd/-

DATE: OCTOBER 20, 2020 **MADHABI PURI BUCH**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA