

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12A(2) and Section 23E of the Securities Contracts (Regulation) Act, 1956, read with Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

In Re: Non-compliance with Clause 36 of the Equity Listing Agreement

In respect of SCN SEBI/HO/IVD/ID1/OW/P/2019/32973/1 dated December 12, 2019

Noticee	PAN
Kirloskar Industries Limited	AAACP3590P

In the matter of M/s Kirloskar Industries Limited

BACKGROUND

1. Kirloskar Industries Limited (hereinafter referred to as '**KIL**'/ '**Company**'/ '**Noticee**') 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 Kirloskar Brothers Limited (hereinafter referred to as "**KBL**"). It was, *inter-alia*, alleged in the said complaints that six individual promoter entities of KBL had together sold 1,07,18,400 number of shares to KIL, the promoter entity of KBL, on October 06, 2010, and this inter se transfer of shares of KBL among these promoters of the company through block deal on stock exchange mechanism was to take advantage of price

sensitive information that they were privy to. Further, it was alleged that there may have been a breach of terms of KBL's model Code of Conduct with respect to insider trading by some of erstwhile employees/ directors/ promoters as they were privy to financial information about KBL. Further, it was also alleged that the selling shareholders, who were amongst the promoters/directors of KIL, not only dealt in securities when in possession of unpublished price sensitive information but also defrauded the public shareholders of KIL by dumping their personal holdings under the shield of inter-se transfer.

3. SEBI conducted an investigation into dealings in the scrip of KBL for the period from March 1, 2010 to April 30, 2011 (hereinafter referred as investigation period), which, apart from other findings, revealed the following:

- 3.1. KIL Board, in its meeting dated July 28, 2010, decided to acquire shares of KBL from the promoters upto a value of Rs. 275 crores.

- 3.2. The financial position of KIL, vis-a-vis investment of Rs. 275 crores, for the year ended 2009-10 was as under:

Description	FY 2009-10 (Rs. Cr.)	Investment of Rs.275 crores as % of Financial Parameters
Operating income	4.66	-
Other Income	46.08	-
Total income	50.74	441.97%
Expenditure	-8.56	-
Profit after tax (PAT)	38.69	610.77%
Net worth	478.65	57.45%

- 3.3. The investment decision was a very significant and material decision for KIL as it was about 610% of the net profit of the company and about 57.45% of the networth of the company.

3.4. KIL had conducted an Annual General Meeting (AGM) at 11 a.m. on July 28, 2010, right after the Board Meeting held at 9:45 a.m. on July 28, 2010, in which the aforesaid decision was taken. It is observed that nothing was disclosed about this decision in the AGM also.

3.5. Observation on disclosure of decision to acquire shares of KBL:

3.5.1. In terms of Clause 36 of the Equity Listing Agreement, *inter-alia*, the Company is required to immediately inform the Exchange of all events, which will have bearing on the performance/ operations of the company as well as price sensitive information.

3.5.2. As observed above, the decision to acquire shares of KBL from the promoters amounting to upto Rs. 275 crores, was a material and price sensitive information for the shareholders of the company.

3.5.3. The subject decision which had a bearing on the performance /operations of KIL warranted a disclosure to the stock exchanges as soon as the decision was taken by the KIL Board. However, the same was not disclosed to the stock exchanges by KIL.

SHOW CAUSE NOTICE

4. Pursuant to the investigation, vide Show Cause Notice (SCN) dated December 10, 2019, the observations of the investigation were communicated to KIL and it was alleged that by not disclosing the price sensitive information i.e., decision to acquire shares of KBL from the promoters of KBL amounting to upto Rs. 275 crores, KIL violated Clause 36 of Equity Listing Agreement read with Section 21 of Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as “**SCRA**”). The Noticee was called upon to show cause as to why appropriate penalty for non-compliance with Equity Listing Agreement, be not issued against it under Section 12A(2) r/w

Section 23E of the SCRA. The Noticee was advised to submit its response/ seek personal hearing within 21 days of the date of receipt of the SCN.

5. From the documents available on records, it is observed that the Noticee vide its letters requested copies of a list of documents attached/ mentioned therein. SEBI vide separate letters provided the copies of documents relied upon in the SCN to the Noticee. The details in this regard are as under:

Noticee	List of Documents sought by Noticee vide letter dated	Copy of Documents relied upon in SCN provided by SEBI vide letter dated
KIL	December 27, 2019	January 21, 2020
	February 11, 2020	February 27, 2020

6. Pursuant to the above mentioned correspondence, in the absence of any reply to the SCN, the Noticee was informed vide letter dated June 30, 2020, that it had been granted an opportunity of personal hearing on July 22, 2020. Vide letter dated July 14, 2020, the Noticee made its submissions on the SCN and also sought a personal hearing. The hearing was held on July 22, 2020, through video-conferencing in view of the Covid-19 pandemic, and the Noticee furnished its additional submissions vide letter dated August 05, 2020.

REPLY, WRITTEN SUBMISSION AND ADDITIONAL SUBMISSION:

7. The submissions of the Noticee made vide its above mentioned letters are consolidated, in brief, as below:

7.1.KIL has been traditionally investing its surplus funds into shares of group companies (including KBL) as long term investments. In or around 2010 the operating business that was carried out in KIL was demerged from KIL with effect from 31st March 2010. The cash that was otherwise kept available for operating

business needs and in the meantime deployed in short term investments, was no longer required for operations and hence this surplus cash could meaningfully be deployed in suitable long term investments.

7.2. KIL was already holding about 10.42% of the share capital of KBL prior to the 2010 Transaction. The board of directors of KIL (those who were uninterested) vide a resolution passed at its meeting held on July 28, 2010, approved the purchase of additional equity shares of KBL from the Promoters of KBL. As they held a substantial number of shares of KBL, KIL could consolidate its shareholding in KBL.

7.3. Being an *inter-se* transfer between the promoters, the process of acquisition had no impact on other shareholders of KBL since the percentage of shareholding of the promoters in KBL before and after the 2010 Transaction remained the same.

7.4. While the Board of Directors of KIL approved the acquisition of shares of KBL on July 28, 2010, neither the exact quantum, timing, or pricing for the acquisition had been decided by the Board of Directors of KIL at such time. The Board authorized one of its directors and its then Company Secretary to work out the modalities for the same with the Promoters.

7.5. Further, as has been already submitted to SEBI, during that time, late Mr. Gautam Kulkarni (one of the Promoters) had just been diagnosed with cancer. Since the Promoters had indicated their preference to sell their shares on the same date and at the same price, though the above resolution was passed in July 2010, KIL proceeded with the acquisition only in October 2010 after making necessary disclosures to the stock exchanges.

7.6. All shareholders of KIL were duly informed of the transaction through various disclosures required under the erstwhile SEBI (Prohibition of Insider Trading)

Regulations, 1992 (“**SEBI PIT Regulations**”) and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (“**Takeover Regulations 1997**”).

7.7. The 2010 Transaction was carried out in a transparent manner on the floor of the exchange at the then current market price when the trading window of KBL was not closed. KIL continues to hold the shares of KBL held prior to as well as in 2010 and after 2010 and till date. Requisite pre-clearances and disclosures in relation to the 2010 Transaction were sought/made by KIL and the Promoters being the promoters of KBL under the SEBI PIT Regulations and Takeover Regulations 1997.

7.8. For the first time in 4th July 2012, SEBI, sought certain details regarding the 2010 Transaction from KIL. By its letter dated 9th July 2012, KIL provided the necessary details and explanations as requested by SEBI. Thereafter, in response to an email dated 20th March 2018 received from SEBI, KIL on the same day by its email dated 20th March 2018, submitted copies of the agenda and outcome of the Board meeting of KIL held on 28th July 2010 submitted to BSE, along with the resolution passed for acquisition of KBL shares. Thereafter, KIL also replied to the query SEBI raised vide email dated August 13, 2018, regarding whether the Promoters or any persons related to them were present at the July 28, 2010, Board Meeting.

7.9. SCN has now been issued despite SEBI having complete knowledge of the 2010 Transaction for a long span of 9 years as is evident from the correspondence between KIL and SEBI right from 2012 till 2019. Such inordinate delay itself is a valid and sufficient ground for dismissal of the SCN. Reliance placed on judgment of Hon’ble SAT in the matter of **Ashlesh Gunvantbhai Shah vs Securities and Exchange Board of India**.

7.10. As per Clause 36 of the Listing Agreement, a company is required to immediately inform the exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive

information. The 2010 Transaction was one such investment that was a routine matter in the ordinary course of business of KIL.

7.11. KIL, in response to queries raised by SEBI, has provided details of the last 5 (five) investments made by KIL in other group companies prior to the decision of the 2010 Transaction. The same are as below:

7.11.1. Kirloskar Engines India Limited – Purchase of 5,00,000 equity shares of Rs. 10/- on January 20, 2009.

7.11.2. Kirloskar Pneumatic Company Limited – Purchase of 61,895 equity shares of Rs. 10/- each on November 17, 2008.

7.11.3. Kirloskar Pneumatic Company Limited – Purchase of 48,930 equity shares of Rs. 10/- each on November 11, 2008.

7.11.4. Kirloskar Pneumatic Company Limited – Purchase of 23,500 equity shares of Rs. 10/- each on November 4, 2008.

7.11.5. Kirloskar Ferrous Industries Limited – Investment in 1,46,92,002 equity shares of Rs. 5/- each, at a premium of Rs. 30 per share, representing the unsubscribed portion of Right Issue Equivalent number of tradable warrant allotted convertible into equity shares of KFIL at Rs. 35/- per share, after 12 months but before 36 months from the date of allotment.

7.12. The aforesaid transactions clearly demonstrate that KIL was regularly investing in its group companies as a part of its ordinary business activities and the decision to acquire shares of KBL and the 2010 Transaction were in the ordinary course of KIL's business and not something that was necessary to disclose.

7.13. The 2010 Transaction did not have any bearing on the performance/operations of KIL and therefore no disclosure was required to be made by KIL under Clause 36 of the Listing Agreement. Therefore, the suggestion that the investment decision of acquiring KBL shares pursuant to the 2010 Transaction was a very significant and material decision since the amount was 610% of the net profit of

KIL has no bearing on the timing of the disclosure since KIL was for all practical purposes an investment company. Further, comparison of the amount of fresh investment which is at market price with net worth is misleading as net worth is at book value.

7.14. Prior to acquisition of shares of KBL, KIL had made a disclosure to the stock exchanges on September 28, 2010, under Regulation 3(3) of the Takeover Regulations, 1997, of its intention to acquire shares of KBL on or after October 6, 2010. Hence, the information was in the public domain and within the knowledge of the public shareholders and to the stock exchanges prior to the consummation of the said transaction.

7.15. Hence it cannot be alleged that the same was “undisclosed” price sensitive information requiring a disclosure under Clause 36 of the Listing Agreement. The said charge is completely contrary to the law laid down by the Hon’ble SAT in the case of *Gujarat NRE Mineral Resources Limited vs SEBI (2011 SCC OnLine SAT 186)*. The said investment was routine as per past practice of KIL of investment in group companies and therefore, was not price sensitive by any stretch of imagination. The law laid down in *Gujarat NRE (supra.)* is abundantly clear and buying and selling of securities by an investment company, especially in a group company, cannot be termed as UPSI.

7.16. It is further alleged that KIL did not disclose this decision to its shareholders at the AGM held at 11 a.m. on 28th July 2010. The fact that this decision was not disclosed to the shareholders supports the case that this was done in the ordinary course of business and not something that was necessary to disclose.

7.17. Paragraph 1 of the SCN refers to “various complaints” upon which the SCN is based. None of these complaints have been furnished to the Noticee.

7.18. During the hearing held on 22nd July, 2020, it was put to the Counsel for KIL that the 2010 Transaction ought to have been reported under Clause 36 of the Listing Agreement as it was a transaction between related parties. It is respectfully submitted that Clause 36 as it stood at the relevant time when the 2010 Transaction was consummated did not specifically cover “related party transaction”, and that this was introduced only on 30th September, 2014 vide the guidance note issued by NSE on Clause 36 of the Listing Agreement.

7.19. SEBI appears to have misread the provisions of Clause 36 of the Listing Agreement and that KIL was not required to make a disclosure under Clause 36 of the Listing Agreement, either on July 28, 2010 or at the time of the consummation of the 2010 Transaction. It is submitted that SEBI has erred in concluding that KIL has violated clause 36 of the Listing Agreement read with Section 21 of the Securities Contracts (Regulations) Act, 1956 and therefore the SCN issued to KIL deserves to be quashed immediately.

ISSUES FOR CONSIDERATION:

8. I have perused the material available on record, which includes the SCN, its annexures and the submissions of the Noticee and its annexures. Before I proceed to frame the issues for consideration, I would like to address the submission of the Noticee that the SCN has been issued after an inordinate delay and is therefore, liable to be set aside on that ground itself.
9. As regards the arguments based on delay, I note that Section 11C of SEBI Act, empowers SEBI at any time, to investigate the transactions in securities which are being dealt with, in a manner detrimental to the investors or the securities market; or any intermediary or any person associated with the securities market that has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder. Hence, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any

period of alleged transactions. Thus, I am of the view that SEBI Act has not prescribed any limitation period on SEBI to initiate or conclude investigation.

10. It is noteworthy that as a generally accepted principle regarding enforcement action by any enforcement authority, investigation / inquiry against any subject entity and the consequent action in pursuance of the same should be completed in a reasonable time frame which would serve the objective of balancing the rights of the persons subjected to enforcement action and the investors whose rights are being protected though enforcement proceedings. However, it is equally true that the time consumption in an investigation or consequent enforcement actions can be caused due to multiplicity of factors such as the violation coming to the notice of the enforcement authority on a later date, the requisite data / material not being readily available, non-cooperation by the subject entities, pendency of connected matters before other courts / authorities, etc.

11. In the instant matter, investigation was carried out in respect of a gamut of alleged violations covering insider trading and fraud in relation to several entities. The allegations covered in the present SCN are only a part of the whole gamut of violations alleged. It would not be out of context to mention that delay was caused on account of numerous reasons including that prima facie sufficient material / evidence was not available with SEBI to initiate detailed investigation in the year 2012 and possible violation of insider trading by the promoters/directors of KBL came to SEBI's notice on a later date i.e. in the year 2016. From the documents available on record, I find that during preliminary examination, vide letters dated April 27, 2012 to KBL and July 04, 2012 to KIL, SEBI had sought certain information w.r.t. the transaction dated October 06, 2010 between promoter / director of KBL and KIL. In response to it, KBL vide letter dated May 10, 2012 and KIL vide letter dated July 09, 2012 had submitted their reply.

12. Upon perusal of SEBI letter dated April 27, 2012 and KBL letter dated May 10, 2012, I find that SEBI had asked KBL to provide the details of persons who were in

possession of the information regarding financial results of KBL declared on October 28, 2010. In response to it, KBL vide letter dated May 10, 2012 stated that “...*Apart from CFO and Company Secretary and the concerned members of their teams, respectively and Auditors of the Company, financial information, is not shared and made available even to any of the other insiders including the Directors...*”. SEBI considered that KBL had furnished correct and complete information to SEBI i.e. the information regarding financial results of KBL was not shared or made available to any of the other insiders including the Directors. Also, KIL letter dated July 09, 2012 in response to SEBI letter had inter alia stated that “...*the investment in the share of Kirloskar Brothers Limited (KBL) by way of acquisition of shares from some of the promoters of the Company (KIL) was made only after the approval of the Board of the Company (KIL)...*” Thus, on the basis of information provided by KBL and KIL coupled with transaction details available with SEBI, it was considered, in 2012 that there was not sufficient prima facie information / evidence available with SEBI to warrant detailed investigation in the matter.

13. However, in the year 2016, KBL vide letter dated April 27, 2016 had informed SEBI that reply given by KBL vide letter in May 10, 2012 in response to SEBI letter dated April 27, 2012 needs to be revised. Accordingly, KBL vide letter dated April 27, 2016 submitted revised response to SEBI letter dated April 27, 2012 inter alia stating that “.....*financial information of the company is shared and made available only to those persons who are the promoters, Directors, Chief Financial Officer, Auditors Company Secretary of the company and the concerned members of the teams, respectively, and the Auditors of the Company.*”

14. Thus, in year 2016, upon receipt of the additional new information from KBL i.e. that financial information of KBL is shared with the Promoters and Directors of KBL, coupled with the fact that on October 06, 2010 promoters/director of KBL and KIL (Promoter of KBL) had entered into the purchase and sale transactions in the shares of KBL and KBL financial results were disclosed to Exchanges on October 28, 2010,

SEBI considered that a detailed investigation in the matter is required, to ascertain any possible violations of insider trading by the promoters/directors of KBL.

15. Hence, considering the facts and circumstance of the case, I am of the view that the possible violation of the provisions of SEBI Act and rules and regulations made there under including the PIT Regulations, 1992 and PFUTP Regulations by the promoters/directors of KBL came to the knowledge of SEBI only in the year 2016. Thereafter, SEBI had started a detailed investigation in the matter. Further, I note that insider trading under PIT Regulations, 1992 and fraud under PFUTP Regulations involves complex issues and detailed fact findings is required in order to identify/determine such violations. From the documents available on record, I find that from May 2016 onwards, SEBI had sought various information from all concerned entities, including the Noticee, and various correspondence / communication were exchanged between them till 2019. I also note that from time to time, the concerned entities, including the Noticee, had furnished data / information sought by SEBI. I also note that detailed fact finding, collection of information / documents/ evidence and analysis / examination of such data / information takes times. From the documents available on record, I note that investigation report in the matter was approved in December 2019 and SCNs were issued to all concerned entities, including the Noticee, in December 2019.

16. Thus, in view of the forgoing, I am of the view that from the date (April 27, 2016) of the coming to the knowledge to SEBI, regarding possible violations of insider trading by the promoter / directors of KBL, till the date (December 03, 2019) of approval of investigation report in the matter and issuance of SCNs on December 10, 11, 12, 2019 to the entities covering a whole gamut of violations, SEBI had completed investigation and initiated enforcement actions and had exercised its power within a reasonable period of time.

17. I also note that Noticee has placed reliance in the matter of *Ashlesh Gunvantbhai Shah vs Securities and Exchange Board of India* passed by Hon'ble SAT vide order

dated January 31, 2020. Upon perusal of the said order, I note that in the said matter the transactions have taken place in the year 2010, SEBI had initiated investigation in the matter in the August 2011 and investigation report was approved in February 2016 and SCN was issued in the July 2017. Therefore, Hon'ble SAT held there was a delay of 7 years in issuance of SCNs and the power to adjudicate has not been exercised within a reasonable period. I note that facts and circumstance in the present case is different from the matter of Ashlesh Guvantbhai Shah as explained in detailed above, particularly in view that information regarding possible violation of insider trading by the promoters /directors of KBL of transactions held in 2010 had come to the knowledge of SEBI in year 2016 and SEBI had initiated a detailed investigation in the matter from 2016 onwards, investigation report was approved in December 2019 and SCNs issued in December 2019. Hence, in my considered view the same is within a reasonable period of time.

18. Further, from the documents available on record and keeping in mind the reach of investigation covering various entities, including the Noticee, I find that during the course of investigation from 2016 to 2019, SEBI had sought various information/ documents from all concerned entities, including the Noticee, through various letters/ emails. All concerned entities, including the Noticee, through various emails/ letter/ correspondence had provided this information/ documents. I note that asking information/ documents and collection of evidence etc. on various occasions from various entities including the Noticee under Section 11 of SEBI Act, 1992 is a part of the investigation process.

19. In any event, in my view, the factum of delay in completion of investigation and / or initiation of enforcement proceedings, in itself, cannot be a ground for withdrawal of proceedings. At this point, it is important to mention that no case been made out by the Noticee that any prejudice was caused to them on account of the time consumption in initiation of investigation/ enforcement proceedings in the present matter. In this context, I find it relevant to refer to the order passed by Hon'ble SAT in the case of Metex Marketing Pvt. Ltd. vs. SEBI (order dated June 4, 2019) wherein Hon'ble SAT

held that: *“This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation.”* In view of the above, I find that no prejudice has been caused to the Noticee.

20. Hence, I do not find any merit in the submission of the Noticee.

21. The Noticee has also contended that the various complaints upon which the SCN is based have not been furnished to it. From perusal of the material available on record, I note that vide letter dated January 21, 2020, the complaints received by SEBI have been provided to the Noticee and hence, this contention of the Noticee has no merit. Further, the complaints only trigger investigation of the matter if required and in the instant case the complaints as such have not been relied upon for the allegations against this Noticee.

22. In view of the above, the following issues for consideration arise:

22.1. **Issue No. 1:** Whether the decision taken by the Board of KIL on July 28, 2010, to acquire shares of KBL from the promoters amounting to upto Rs.275 crores was a material and price sensitive information for the shareholders of KIL?

22.2. **Issue No. 2:** If the answer to Issue No. 1 is affirmative, then whether the Noticee is in violation of Clause 36 of Equity Listing Agreement read with Section 21 of SCRA?

22.3. **Issue No. 3:** If the answer to Issue No. 2 is affirmative, then whether any directions need to be issued against the Noticee under Section 12A(2) read with Section 23E of the SCRA?

Issue No. 1: Whether the decision taken by the Board of KIL on July 28, 2010, to acquire shares of KBL from the promoters amounting to upto Rs.275 crores was a material and price sensitive information for the shareholders of KIL?

23. I note that the main contentions of the Noticee in denying that this information was material and price sensitive are as below:

23.1. KIL is primarily an investment company and has always held shares in its group companies, including KBL.

23.2. The said investment was routine as per the past practices of KIL and was in the ordinary course of business of KIL.

23.3. The said decision has no bearing on the timing of the disclosure.

23.4. The 2010 Transaction did not have any bearing on the performance/operations of KIL.

23.5. Comparison of the amount of fresh investment which is at market price with net worth is misleading as net worth is at book value.

23.6. The decision was not disclosed to the shareholders at the AGM held on July 28, 2010, supports the case that this was done in the ordinary course of business and not something that was necessary to disclose.

24. The Noticee has relied on the law laid down by the Securities Appellate Tribunal in the case of *Gujarat NRE Mineral Resources Limited vs SEBI (2011 SCC OnLine SAT 186)* where it was held that:

“4. ...

FCGL is an investment company whose business is only to make investments in the securities of other companies. It earns income by buying and selling securities held by it as investments. This being the normal activity of an investment company, every decision by it to buy or sell its investments would have no effect, much less material, on the price of its own securities. If that were so then no investment company would be able to function because every time it would buy or sell securities held as investments, it would have to make disclosures to the stock exchange(s) where its securities are listed. Such decisions of an investment company, in our opinion, do not affect the price of its securities...”

25. Before I proceed further, I would like to reproduce here the definition of “price sensitive information” in terms of Regulation 2 (ha) of the SEBI PIT Regulations, 1992:

“[(ha) “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.

Explanation.—The following shall be deemed to be price sensitive information :—

- (i) periodical financial results of the company;*
- (ii) intended declaration of dividends (both interim and final);*
- (iii) issue of securities or buy-back of securities;*
- (iv) any major expansion plans or execution of new projects.*
- (v) amalgamation, mergers or takeovers;*
- (vi) disposal of the whole or substantial part of the undertaking;*
- (vii) and significant changes in policies, plans or operations of the company;]”*

26. A reading of the definition of “price sensitive information” would make it clear that any information, which relates to a company and which when published is likely to materially affect the price of its securities, would be price sensitive. I note here that the clause given to the explanation is an inclusive list and is not exhaustive in nature. The main test to determine whether any information is price sensitive in nature or not would require the satisfaction of the following:

26.1. Whether the information directly/ indirectly relates to the company AND

26.2. Whether the information, which when published, is likely to materially affect the price of its securities.

27. As mentioned in the order of the Hon’ble SAT referred to by the Noticee, the only business of an investment company is to make investments in the securities of other companies. It earns income by buying and selling securities held by it as investments.

In other words, the only income of such a company shall be from the buying and selling of securities of other companies. Such investment decisions of an investment company are part of its normal activity and would have no effect, much less material effect, on the price of its own securities.

28. I note the following regarding the income of KIL from its annual reports for FY 2009-10 and FY 2010-11:

Income (in Rs.)	FY 2009-10	FY 2010-11
Operating Income	4.66 crores	4.14 crores
Other Income	46.07 crores	64.75 crores

Further examination of the Schedule to 'Other Income' shows that a significant portion of 'Other Income' came from 'Income from Licensing of Property'. For example, for FY 2009-10, income from licensing of property accounted for 43.44% of 'Other Income', while it accounted for 31.59% of 'Other Income' in FY 2010-11. Hence, I note from the material available on record that the income of KIL is not derived entirely from the purchase and sale of securities as would be the case of investment companies. Therefore, the decision of the Hon'ble SAT referred to by the Noticee cannot be made entirely applicable to the present facts of the case.

29. Further, I note that the decision taken by KIL on July 28, 2010, has the following features:

29.1. The shares were to be acquired directly from the promoters of KBL at the prevailing market price and not directly from the open market. Hence, to that effect, with the identity of the sellers and the modalities regarding the transaction already known, the transaction was in the nature of a structured transaction.

29.2. As seen from the disclosure filed under Regulation 3(3) of the Takeover Regulations, KIL was proposing to acquire around 15% shares in KBL, over and above the 10.42% stake that it already held. Hence, the investment was in the

nature of a strategic acquisition with a view to also consolidate its shareholding in KBL.

29.3. As seen from the Balance Sheet of KIL, as on March 31, 2010, the proposed investment of Rs. 275 crores was 57.45% of the networth of KIL. Even if the entire size of the Balance Sheet is considered, then the investment is still more than 50% of the same. It is evident, that pursuant to making such a substantial investment in KBL, the future performance of KBL would play a large role in determining the performance of KIL viz., its financial performance, credit rating, ability to raise funds, etc.

29.4. If the details of the immediate five investments of KIL in its group companies preceding the 2010 Transaction are seen, then the following can be observed:

Sr. No.	Name of Group Company	Investment	Amount invested	Date of investment
1	Kirloskar Engines India Limited	Purchase of 5,00,000 equity shares of Rs. 10/- each	Rs. 50,00,000/-	January 20, 2009
2	Kirloskar Pneumatic Company Limited	Purchase of 61,895 equity shares of Rs. 10/- each	Rs. 6,18,950/-	November 17, 2008
3		Purchase of 48,930 equity shares of Rs. 10/- each	Rs. 4,89,300/-	November 11, 2008
4		Purchase of 23,500 equity shares of Rs. 10/- each	Rs. 2,35,000/-	November 4, 2008
5	Kirloskar Ferrous Industries Limited	Investment in 1,46,92,002 equity shares of Rs. 5/- each, at a premium of Rs. 30 per share	Rs.51,42,20,070/-	
Total of investments in Group Companies			Rs. 56,05,63,320/-	

29.4.1. With respect to the investment at Sr. No. 1 in the table above i.e., purchase of 5 lac shares of Kirloskar Engines India Ltd. (KEIL), it is noted from the annual report of KIL for FY 2009-10 that KEIL was promoted and incorporated as a wholly owned subsidiary of KIL on January 12, 2009, to take over the engines and auto-components business of KIL. Further, this investment in KEIL stood cancelled as on March 31, 2010, and hence, this was not a long term investment decision of KIL, rather was a decision taken when it was divesting its own operations into another entity.

29.4.2. The total investment made by KIL in acquiring shares of its group companies, prior to the 2010 Transaction, is approximately Rs. 51 crores or less than one-fifth of the amount that was proposed to be invested in acquiring shares of KBL. Hence, considering the quantum of the amount proposed to be invested in KBL vis-à-vis the amount invested in the immediate preceding five transactions in other group companies, it is evident that the 2010 Transaction was not a routine transaction in the ordinary course of business.

29.5. The Noticee has also provided details of all its holdings in its group companies as on October 31, 2010. From these details, I note that there is a preponderance of probability that the Noticee was moving towards consolidating its holding in group companies. However, the same only reinforces the finding that this acquisition in KBL was a strategic decision.

30. In view of the above mentioned features of the proposed investment by KIL in shares of KBL, I am of the view that the transaction was a structured and strategic transaction with a long term view to consolidate its holding in KBL and was not a transaction that can be said to be routine or in its ordinary course of business or in the nature of regular trading in shares.

31. KIL has contended that the fresh investment made at market price cannot be compared with networth which is at book value. If the investment is compared with the market value of KIL, then the following is observed:

<i>Parameter</i>	<i>As on July 28, 2010</i>	<i>As on October 06, 2010</i>
<i>No. of Outstanding shares of KIL at end of FY 2009-10 (A)*</i>	9,708,619	9,708,619
<i>Closing price of scrip on BSE (B)</i>	367.05	352.55
<i>Market Value (A*B)</i>	356.36 crores	342.28 crores
<i>Investment decision as a % of Market Value</i>	77.17%	80.34%

* Source: Shareholding patterns for Quarter ended September and December 2010, filed by KIL with BSE

32. On a quantitative basis, I note that this investment is an amount which exceeds 50% of the networth and even its entire balance sheet and on this basis alone, the decision is significant and material in nature. Further, even if the market value of KIL is considered in place of the book value of KIL, then it can be seen that on the day the decision was taken, the investment would be around 77% of the market value of KIL. As already found above, the transaction was a structured and strategic acquisition in KBL and the decision taken was such that it was bound to impact the financial performance of KIL. Any reasonable and prudent investor, when in possession of this information, would make use of it to decide on his/ her investment decisions regarding the shares of KIL and therefore, such material information, if disseminated to investors, would most likely have a significant effect of the price of the shares of KIL. For instance, on knowing that KIL was about to invest over half of its balance sheet in shares of KBL, an investor, who was not bullish on the prospects of KBL, would likely sell the shares of KIL, while an investor who was positive about KBL, would likely consider buying shares of KIL.

33. I note that KIL has contended that the 2010 Transaction did not have any bearing on the performance/operations of KIL. The question then arises is why did KIL make such an investment in KBL if it did not expect the same to have any bearing on the performance of KBL. It would have been far more prudent and in the interest of the shareholders of KIL to continue holding the cash of Rs. 275 crores in a bank fixed deposit. Therefore, the argument that subsequent to the purchase of the shares of KBL there was no impact on the performance/ operations of KIL is irrelevant, as it was surely “expected” to be beneficial to KIL.

34. I would like to note here that if KIL had decided in its Board Meeting held on July 28, 2010, to invest upto Rs. 275 crores in shares of KBL by acquiring these shares from the open market, then immediate disclosure of such a decision could have led to adverse consequences for the shareholders of KIL, such as an attempt by market entities to front run the scrip of KIL, manipulate its scrip price, etc. However, as noted earlier, the transaction was in the nature of a structured and strategic acquisition where the shares were to be bought from the promoters in the block trade window. and not in the ordinary course of an investment business of buying and selling shares on the market.

35. Therefore, considering the facts of the case, I am of the opinion that the judgment of the Hon’ble SAT in the case of *Gujarat NRE Mineral Resources Limited vs SEBI* cannot be applied to the case. Further, I note that the decision taken by KIL on July 28, 2010, satisfies both the tests regarding “price sensitive information”, as mentioned in para 26 above.

36. In view of the above, I note that the decision to invest an amount upto Rs. 275 crores in buying shares of KBL was a material and price sensitive information for the shareholders of KIL.

Issue No. 2: If the answer to Issue No. 1 is affirmative, then whether the Noticee is in violation of Clause 36 of Equity Listing Agreement read with Section 21 of SCRA?

37. Clause 36 of the Equity Listing Agreement and Section 21 of the SCRA are reproduced as below:

Clause 36 of the Listing Agreement provides:

“36. Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lockouts, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information.”

Conditions for listing

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

38. As already held above, the decision taken in the Board Meeting of KIL on July 28, 2010, to invest an amount of upto Rs. 275 crores in buying shares of KBL, was a material and price sensitive information, expecting to have a bearing on the performance of KIL. Hence, as per Clause 36 of the Equity Listing Agreement, KIL was required to immediately inform the stock exchanges of the decision. It is a matter of fact that KIL has not disclosed the same to the stock exchanges immediately after the decision was taken.

39. The Noticee has contended that disclosures were made to the stock exchanges on September 28, 2010, prior to executing the 2010 Transaction and hence, the same was within the knowledge of the public shareholders and of the stock exchanges. I note that these disclosures were made under the Takeover Regulations and Insider Trading Regulations. However, Clause 36 places a statutory obligation on KIL to immediately disclose information that is price sensitive in nature. Disclosures made under other Regulations of SEBI after a period of two months cannot be a substitute for this obligation.

40. Hence, the contention of the Noticee that it made disclosures to the stock exchanges prior to executing the 2010 Transaction cannot be accepted.

41. In view of the above, I find that KIL has violated the provisions of Clause 36 of the Equity Listing Agreement read with Section 21 of the SCRA.

Issue No. 3: If the answer to Issue No. 2 is affirmative, then whether any directions need to be issued against the Noticee under Section 12A(2) read with Section 23E of the SCRA?

42. The provisions of Section 12A(2) and Section 23E of the SCRA are reproduced below:

Power to issue directions.

12A.

(1)...

(2) Without prejudice to the provisions of sub-section (1) and section 23-I, the Securities and Exchange Board of India may, by an order, for reasons to be recorded in writing, levy penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23GA and 23H after holding an inquiry in the prescribed manner.

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E.

If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.

43. I note here that vide SEBI order WTM/MPB/IVD/ID1/139/2020 dated October 20, 2020, it has been held that the decision to invest an amount of upto Rs. 275 crores in shares of KBL, taken by the Board of Directors of KIL on July 28, 2010, was a fraud that was perpetrated on KIL and its shareholders. In the present matter, it has been established that KIL has failed to comply with the listing conditions mentioned in the Equity Listing Agreement, which is a statutory obligation and therefore, penalty is attracted once the contravention of this statutory obligation is established. Therefore, though KIL itself has been a victim of the fraud carried out by the Directors of KIL, I am constrained to levy a penalty on KIL, as considered appropriate.

44. I note that as per Section 23E, KIL shall be liable for a penalty not exceeding Rs. 25 crores. I note that Section 23J of the SCRA provides the factors that are to be taken into account while deciding upon the quantum of penalty and the same are reproduced below:

Factors to be taken into account while adjudging quantum of penalty

23J

While adjudging the quantum of penalty under 135[section 12A or section 23-I], the 136[the Securities and Exchange Board of India or 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.

45. I note that the illustrative factors mentioned in Section 15J of the SEBI Act, 1992, are the same as those in Section 23J of the SCRA. Here, I would like refer to the judgment of the Hon'ble Supreme Court in the matter of Adjudicating Officer, SEBI, vs. Bhavesh Pabari (decision dated 28 February, 2019), which stated as follows:

“...Section 15-J 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 15-A to Section 15-HA of the SEBI Act...”

46. 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 abovementioned case observed:

“...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 15-J are mandatory conditions which must be read into Sections 15- A to 15-HA 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 15-A to 15-HA of the SEBI Act.”

47. The Hon’ble Supreme court further observed “....*We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15- J 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 15-J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty...*”

48. In view of the above, considering that Section 15J and Section 23J are analogous provisions in two different Acts, I have considered the following factors for adjudging the quantum of penalty in the instant matter:

48.1. There is no material on record to quantify the amount of disproportionate gain i.e., unlawful / ill-gotten gains / loss avoided by the Noticee.

48.2. No quantifiable figures are made available on record to assess the amount of loss caused to an investor or group of investors as a result of the default of the Noticee.

48.3. There is no material on record to show that the default by the Noticee was repetitive in nature.

48.4. The decision taken on July 28, 2010, has been held to be a fraud perpetrated on KIL and its shareholders.

49. In view of the above mentioned mitigating factors, I am of the view that the Noticee is liable for a penalty of Rs. 5,00,000/- (Rs. Five Lakhs only) and that this penalty is commensurate with the violation on part of the Noticee.

ORDER

50. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 12A(2) read with Section 23E of the Securities Contracts (Regulations) Act, 1956, and Regulation 103 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, hereby issue the following directions and impose the following penalty:

50.1. The Noticee, Kirloskar Industries Ltd., shall pay a penalty of Rs. 5,00,000/- (Rs. Five Lakhs only) under Section 23E of the SCRA.

50.2. The Noticee shall pay the above amount within 45 (forty-five) days from the date of service of this order.

51. The Noticee may use any one of the following methods for payment of penalty:

51.1. By way of crossed demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai or

51.2. 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

** Noticee who is making e-payment is advised to forward the details and confirmation of the payment so made to the Enforcement Department of SEBI for its 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. Payment is made for: (like penalties/disgorgement/recovery/settlement amount and legal charges along with order details:	

51.3. Online at the following path on the 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.

52. The order shall come into force with immediate effect.

53. If there is a failure to pay the penalty, as mentioned above, SEBI may recover the amount from the Noticee as per applicable law.

54. A copy of this order shall be served upon the Noticee 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