BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/KS/AA/AO/74-79/2017-18]

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

In respect of

1. **KEN Infratech Limited (PAN: AAECK1605J)**
2. **Shri Sukhwinder Singh (PAN: CUEPS1687K)**
3. **Shri Kuldeep Singh (PAN: BQXPS7815M)**
4. **Shri Gurwinder Singh (PAN: CLEPS7179D)**
5. **Shri Sukhchain Singh (DIN: 03294730)**
6. **Shri Mahavir Singh (PAN: CRRPS1400A)**

In the matter of KEN Infratech Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated Adjudication proceedings against KEN Infratech Limited ('KIL') and its directors namely Shri Sukhwinder Singh, Shri Kuldeep Singh, Shri Gurwinder Singh, Shri Sukhchain Singh and Shri Mahavir Singh (hereinafter individually referred to as '**Noticee-1/KIL'**, '**Noticee-2 to 5**' respectively and collectively referred to as '**Noticees**') as they were allegedly engaged in illegal mobilization of funds from the public by floating, sponsoring or launching schemes, which falls within the ambit of Collective Investment Scheme (hereinafter referred to as '**CIS**') as defined in Section 11 AA of the Securities and Exchange Board of

India Act, 1992 (hereinafter referred to as '**SEBI Act**'), without obtaining a certificate of registration from SEBI as required under the provisions of Section 12 (1B) of the SEBI Act and the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as '**CIS Regulations**').

2. In the said matter, SEBI had also passed final order dated December 17, 2014 against the Noticees directing them, *inter alia*, to abstain from collecting any money from the investors or carrying out/ launching any Collective Investment Schemes and to wind up the existing Schemes and to refund the monies collected from the investors through various schemes launched by them.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide communique dated June 02, 2017 under Section 15-I (1) and 15-I (2) of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules,1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under Section 15 D(a) of the SEBI Act, the violation of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice (hereinafter referred to as '**SCN**') dated October 31, 2017 was issued to the Noticees under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticees and penalty, if any, be not imposed on them under the provisions of Section 15D(a) of the SEBI Act for the alleged violation by the Noticees. The said SCN was sent via Registered Post Acknowledgement Due ('RPAD'), hand delivery and email. The SCN through email was sent at the email addresses: supersandeep27@yahoo.com; sukhchaindhillon389@gmail.com;

and csankitgandhi@gmail.com, which were obtained from ROC filings made by KIL. The SCN could not be delivered to the Noticees via RPAD and hand delivery. Hence, the SCN was affixed at the last known addresses of the Noticees in terms of Rule 7(c) of the Adjudication Rules. In case of KIL, the SCN was affixed at its last available address in Amritsar and Ferozepur city.

5. Thereafter, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, the Noticees were granted a final opportunity to submit reply before December 15, 2017 and an opportunity of personal hearing on December 18, 2017 vide reminder cum hearing Notice dated December 07, 2017. The said reminder cum hearing notice dated December 07, 2017 was sent via RPAD, hand delivery and email. However, the said reminder cum hearing notice could not be delivered to the Noticees via RPAD and hand delivery. Hence, the said reminder cum hearing notice was affixed at the last known addresses of the Noticees in terms of Rule 7(c) of the Adjudication Rules. In case of KIL, the SCN was affixed at its last available address in Amritsar and Ferozepur city. On the scheduled date of hearing on December 18, 2017, none of the Noticees attended the hearing.

6. Thereafter, vide hearing notice dated December 19, 2017, the Noticees were granted a final opportunity of hearing on December 27, 2017. In the said hearing Notice, it was clearly mentioned that in case absence at hearing, the matter shall be proceeded on the basis of material available on record. The hearing Notice dated December 19, 2017 was sent via RPAD, hand delivery and email. However, the said reminder cum hearing notice could not be delivered to the Noticees via RPAD and hand delivery. Hence, the said hearing notice was affixed at the last known addresses of the Noticees in terms of Rule 7(c) of the Adjudication Rules. In case of KIL, the SCN was affixed at its last available

address in Amritsar and Ferozepur city. On the scheduled date of hearing on December 27, 2017, none of the Noticees attended the hearing.

7. In view of the above, I am of the view that principles of natural justice have been complied with since sufficient opportunities have been provided to the Noticees to submit their reply to the SCN and to appear for hearing. However, neither did the Noticees file any reply in the matter till date, nor did the Noticees appear on the date scheduled for the personal hearing. Therefore, I am compelled to proceed in the matter against the Noticees *ex parte* on the basis of available documents and information.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have taken into consideration the facts and circumstances of the case and the material available on record and the issues that arise for consideration in the present case are :

   (a) Whether the Noticees have violated section 12(1B) of the SEBI Act, 1992 and Regulation 3 of CIS Regulations, 1999?

   (b) Does the violation, if any, attract monetary penalty under Sections 15D(a) of the SEBI Act?

   (c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

9. Before moving forward, it is pertinent to refer to the relevant provisions of the SEBI Act and the CIS Regulations, 1999, which read as under:

   Section 11 AA of the SEBI Act:

   11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) [or sub-section (2A)] shall be a collective investment scheme:

[Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.]

(2) Any scheme or arrangement made or offered by any person under which,—

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.

(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.

Section 12(1B) of SEBI Act:

"12(1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations….."

Regulation 3 of the CIS Regulations:

3. No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme.

10. I note that despite the SCN and hearing notices having been duly served upon the Noticees, they have failed to submit any reply to the SCN till the date of this order and have not refuted the charges. In this context, I would like to rely upon the observations of The Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) wherein it, *inter alia*, observed that - *".......the appellants did not file any reply to the second show- cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them."*

11. The Hon'ble SAT has again in the matter of Sanjay Kumar Tayal & Others v SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), inter alia, observed that – *"….As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices.…"*

12. Before proceeding further, it would be appropriate to mention the relevant facts of the case leading to the present proceedings against the Noticees:

(a) SEBI received complaints against KIL on August 08, 2011, October 07, 2011 and August 01, 2012 *inter alia* alleging that the company has been mobilizing funds from general public at large on the pretext of booking of land under its various plans / schemes and that it does not have any land.

(b) The company was incorporated on November 01, 2010. The registered address of the company is situated at 3413, Mahendra Park, Rani Bagh, New Delhi – 110034. As per Form 32 and the signatory details for KIL, the Noticees

2 to 6 viz. Shri Sukhwinder Singh, Shri Kuldeep Singh, Shri Gurwinder Singh, Shri Sukhchain Singh and Shri Mahavir Singh were directors of the Company.

(c) It is observed from the documents available on record that KIL had the following plans in operation:

i. Cash down payment plan (development agreement term)

ii. Payment plan under IPP (development agreement term duration 36 months)

iii. Payment plan under IPP (development agreement term duration 60 months)

iv. Payment plan under IPP (development agreement term duration 96 months)

v. Payment plan under IPP (development agreement term duration 120 months)

vi. Payment plan under IPP (development agreement term duration 180 months)

vii. Payment plan under IPP (development agreement term duration 240 months)

viii. Cash development plan (development agreement term flexi-1 duration 72 months)

ix. Cash development plan (development agreement term flexi-2 duration 60 months)

(d) I note that KIL had submitted to SEBI the copies of 'agreement cum application form', 'registration letter', 'receipt' and 'payment plans' for the Schemes/ Plans launched by it. The relevant terms and conditions of the application form are as below:

"AND WHEREAS THE COMPANY organizes the sale of undeveloped agricultural land of different sizes, to prospective buyers and undertakes, at the option of the Customer, the development of the same.

AND WHEREAS THE COMPANY has made arrangements for purchasing/procuring the land with clear and marketable title and with possession, which forms a part of the various plans launched by THE COMPANY.

AND WHEREAS THE COMPANY has agreed to arrange for the sale of the PLOT in favour of the CUSTOMER, and to develop the same at its expense, by undertaking various development activities, in which the Company possesses the requisite expertise and skill.

1. SALE OF PLOTS

The land shall be allotted in the name of the Customer, in case of Cash Down Payment Plans after completion of nine months from the date of agreement and in Installment Payment Plans after having receipt of 50% of the cost of the plot and development charges within the period of 270 days……

2. PRELIMINARY WORK

THE COMPANY or its nominee shall procure and install bore wells, open wells and other water points and install motors, pump sets, irrigation, main pipelines, electrical installations and temporary sheds/structures, subject to the terms and conditions laid down elsewhere in this Agreement.

3. DEVELOPMENT OF LAND

The Customer has exercised the option to get the Plot developed by the Company and this Agreement shall be construed as a confirmation thereof.

5. POSSESSION

The Customer shall be owner in vacant physical possession of the plot at all times, after execution of registered sale deed. The Company shall enter upon the plot only for the limited period for the purpose of undertaking development of the plot, as per the terms of this agreement between the customer and the company in that regard……… The overall security of the Plot shall, however, be the responsibility of the Company till the expiry of the development period of Plan opted for by the customer…….

6. IRRIGATION SYSTEM

The Company shall provide such irrigation system as it may deem appropriate, which shall be part of the overall irrigation system, depending upon the nature of soil, crop pattern of the plot, etc, in consonance with the expert advises received by the Company.

7. FERTILIZATION

The Company shall upon planting the saplings, plants, crops, trees etc. over the aforesaid plot, shall use necessary fertilizers, pesticides etc. as it may deem appropriate.

8. EMPLOYMENT OR PERSONNEL

The Company shall employ its own technical experts, advisors, and such other personnel, as it may consider necessary, for the purpose of carrying out its obligations as per this agreement, and shall pay their fees/salary/ wages and the entire expenses incidental thereto.

9. SALE OF PRODUCE

Unless specifically otherwise directed by the Customer, the Company shall be responsible for arranging the sale of the produce, if any, out of the plot, on behalf of the Customer. For the purposes of arranging the sale of the produce as aforesaid, the Company shall have the sole discretion to decide as to whether the produce shall be sold in the wholesale market and/or in the semi-wholesale market, and/or to one or more marketing Company, or may decide to sell it to any other market which the Company may consider appropriate for the sale of a particular grade of the produce.

…….

10. SALE PRICE

The task of sale of the produce, undertaken by the company under the provision of the aforesaid clause 9, shall be subject to the condition that depending upon the grade of the produce harvested from the plot, market conditions and other relevant factors, the Company may decide to sell the produce at such price which it may deem fit and reasonable in the circumstances prevailing at that point of time. It shall be the endeavor of the company to sell the product at the best prevailing prices and terms. The customer shall accept the net sale proceeds, so obtained by the company from the sale of the said produce, as final and no dispute shall be raised in respect of the same.

…….

14. WASTAGE

Both the Company and the Customer agree that in process of arranging for sale of the produce, if any, pursuant to the aforesaid clause 9, there will normally be a percentage of wastage at the time of harvesting, grading and handling before the delivery/sale. The Company shall keep such percentage of wastage at such nominal levels as practicable and this shall be applicable to every harvest in general without any reference to the produce harvested……"

13. I note that the aforementioned schemes offered by KIL have to be considered in light of Section 11AA of the SEBI Act, 1992. The aforesaid Section 11AA of the SEBI Act, 1992, provides for the conditions to determine whether a scheme or arrangement is a 'collective investment scheme'. The conditions as stipulated vis-à-vis the facts of the case are considered hereafter.

14. The first condition under the section 11AA(2) of the SEBI Act, 1992 is that the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement.

15. With respect to the first condition above, I observe that KIL floated investment plans / schemes whereby it collected contributions / payments from investors. The said monies are utilized for the purposes of the scheme, which is sale / purchase and development of land. KIL promised to sell plots to its investors and to develop the same but no specific plot was allotted to the investor at the time of entering into the agreement. This indicates that KIL is pooling payments from its investors and utilizing it for the purposes of the plans/ schemes. In view of the same, I find that KIL collecting the money from the investors and utilizing it for the purposes of the plans/ schemes. Hence, I note that Schemes/Plans of KIL satisfy the first condition stipulated in Section 11AA(2) of the SEBI Act.

16. The second condition under the section 11AA(2) of the SEBI Act, 1992 is that the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement.

17. I note that that the contributions / payments are made by investors to KIL in terms of the various payment plans for its schemes/ plans detailed in the brochures issued by the company. KIL indicates the projected land / plot value at the expiry of the term in its brochures. The contributions or payments are made by the investors in schemes / plans launched by KIL with a view to receive profits or property from such plans / schemes. Therefore, I find that schemes / plans launched by KIL attract the second condition as stipulated in Section 11AA(2) of the SEBI Act.

18. The third condition under the section 11AA(2) of the SEBI Act, 1992 is that the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors.

19. I note that the investors give KIL the authority to develop and maintain the plot of land vide the 'application form cum agreement'. KIL undertakes to plant trees, saplings, crops, spray fertilizers, etc. The proceeds from the sale of produce from such land is payable to the investor. I also observe from the plans of KIL that the customer/ investor only decides the plan number, term of the plan but neither has any role in the acquisition or development / management of the land nor manages their investments in the plans/ schemes. Their investments were managed and utilized by KIL, which in the end offered 'Projected Land/ Plot Value of Expiry of Term'. I find from the above that the contribution, investment

and property, if any, pertaining to the plans/ schemes were managed by KIL and thus attract the third condition as stipulated in Section 11AA(2) of the SEBI Act.

20. The fourth condition under the section 11AA(2) of the SEBI Act, 1992 is that the investors do not have day-to-day control over the management and operation of the scheme or arrangement.

21. As noted above, I observe that KIL undertakes to plant trees, saplings, crops, spray fertilizers, etc. The proceeds from the sale of produce from such land is payable to the investor. The investor has to accept the net proceeds so obtained as final and no dispute can be raised in respect of the same. Therefore, the property, contribution or investment forming part of the plans / schemes, is managed on behalf of the investors by KIL which also indicates that the investors have no day to day control over it. Therefore, I find that the Schemes/ Plans floated by KIL attract the fourth condition as stipulated in Section 11AA(2) of the SEBI Act.

22. In view of the aforesaid discussion / observations and material available on record, I conclude that the schemes/ plans of the Noticees satisfy all four conditions of section 11AA(2) of the SEBI Act. I, therefore, find that Noticees are engaged in the fund mobilising activity from public through investment contracts by floating / sponsoring / launching collective investment schemes as defined in section 11AA of the SEBI Act without having registration with the SEBI as mandated under section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations for sponsoring / launching collective investment schemes.

23. Incidentally, though not part of the present proceedings, I note that SEBI had issued appropriate directions to the Noticees 1 to 5 viz. KEN Infratech Limited, Shri Sukhwinder Singh, Shri Kuldeep Singh, Shri Gurwinder Singh and Shri

Sukhchain Singh vide Interim order dated June 18, 2013 in order to protect the interest of investors and also to secure the interest of the securities market. Thereafter, SEBI had also passed final order dated December 17, 2014 against the Noticees 1 to 5 viz. KEN Infratech Limited, Shri Sukhwinder Singh, Shri Kuldeep Singh, Shri Gurwinder Singh and Shri Sukhchain Singh directing them, *inter-alia*, to abstain from collecting any money from the investors or carrying out/ launching any Collective Investment Schemes and to wind up the existing Schemes and to refund the monies collected from the investors through various schemes launched by them. However, I find that there is nothing on record to show that Noticees have complied with the said directions. Incidentally, I also note that SEBI has issued a press release dated June 06, 2016 cautioning investors against unregistered CIS and also published a list of such CIS. I find that the name of Noticee 1 is appearing in the said caution list.

24. The Hon'ble Supreme Court of India in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} held that " *In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary*".

25. In view of the above, I am convinced that it is a fit case to impose monetary penalty on the Noticees under the provisions of Section 15 D(a) of the SEBI Act, which reads as under:

Penalty for certain defaults in case of mutual funds.

15D. If any person, who is—

(a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which he sponsors or carries on any collective investment scheme including mutual funds, or one crore rupees, whichever is less;

26. While determining the quantum of penalty under Section 15D(a) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

Section 15J - 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.

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

27. The material available on record also has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the non-compliance committed by the Noticees.

ORDER

28. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 1,00,00,000 (Rupees One Crore only) jointly and severally on the Noticees viz. KEN Infratech Limited, Shri Sukhwinder Singh, Shri Kuldeep Singh, Shri Gurwinder Singh, Shri Sukhchain Singh and Shri Mahavir Singh under the provisions of Section 15D(a) of the SEBI Act. The amount of the penalty shall be payable jointly and severally by the Noticees. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

29. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

30. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051."

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	

7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

31. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. KEN Infratech Limited, Shri Sukhwinder Singh, Shri Kuldeep Singh, Shri Gurwinder Singh, Shri Sukhchain Singh and Shri Mahavir Singh and also to the Securities and Exchange Board of India.

Date: January 29, 2018

Place: Mumbai

K SARAVANAN

GENERAL MANAGER &

ADJUDICATING OFFICER