BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AS/DP/2024-25/30992-30995]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND SECTION 23 I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956

In respect of:

Sr. No.	Name	PAN
1.	Kepler Information Systems Private Limited	AAECK5818R
2.	Ms. Kalpana Komati	ASAPK9943L
3.	Shri Trivikram Kolukuluri	CVHPK1468G
4.	Ms. Silamkoti Abilash	GWLPS3968A

In the matter of Bodhtree Consulting Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (**SEBI**) was in receipt of an alert against Bodhtree Consulting Limited (‘**BCL’ / ‘company’**) a company listed on the Bombay Stock Exchange Limited (“**BSE**”), alleging trading by an entity in the said scrip in large volume and value, in off market on February 07, 2018 significantly contributing in the exchange volume in the said stock on that date. Further, it was also alleged that the source of the said off market transfer of shares was from BCL Employees Benefit Trust.

2. Therefore, SEBI conducted a detailed investigation to ascertain the aspect of price rise and misuse of physical shares for sale and transferring the proceeds to the relatives of

the Managing Director of the company in violation of the provisions of SEBI Act, 1992 (**SEBI Act**), SEBI (PFUTP) Regulations, 2003 (**PFUTP Regulations**) and Securities Contracts Regulation Act, 1956 (**SCRA**, **1956**) in the scrip of BCL during the period January 02, 2017 to March 26, 2018 ("**Investigation Period**" or "**IP**").

3. Based on the above investigation, it was observed that Kepler Information Systems Pvt. Ltd. (**Noticee No.1**), Kalpana Komati (**Noticee No.2**), Trivikram Kolukuluri (**Noticee No.3**) and Silamkoti Abhilash (**Noticee No. 4**) had entered into off market transactions of shares of the company without complying with the provisions of Spot Delivery Contract. Therefore, it was alleged that they have violated the provisions of Section 16 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA**"), read with SEBI Notification LAD-NRO/GN/2013-14/26/6667 dated October 03, 2013, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA. Further, it was also alleged that Noticee No. 4) failed to furnish the documents/ information sought by SEBI vide Summons/reminder summons issued under Section 11C (3) of the SEBI Act and thus failed to comply with the same. Accordingly, it was alleged that Noticee No. 4 has also violated Section 11C (3) of the SEBI Act. The aforesaid entities are hereinafter individually referred to by their respective Noticee numbers and collectively referred to as "***Noticees***" unless the context specifies otherwise.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI appointed Shri G.Ramar as the Adjudicating Officer, vide order dated April 18, 2023, under Section 15-I (1) of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'SEBI Adjudication Rules') and Section 23 I of the SCRA, 1956 read with rule 3 of the Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as 'SCR Adjudication Rules') to inquire into and adjudge under the provisions of the Section 15A(a) of the SEBI Act and Section 23H of the SCRA,

for the violations alleged to have been committed by the Noticees. Subsequent to his transfer, vide communique dated July 31, 2023, Ms. Soma Majumdar was appointed as the Adjudicating Officer. Pursuant to internal restructuring, Shri Shashi Kumar Valsakumar was appointed as the Adjudicating Officer vide communiqué dated October 06, 2023. Upon his transfer, vide communique dated July 29, 2024, the undersigned has been appointed as the Adjudicating Officer.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Based on the findings by SEBI, Show Cause Notice dated June 16, 2023 (hereinafter referred to as 'SCN') was issued to the Noticees under Rule 4(1) of the Adjudication Rules and Rule 4(1) of SCR Rules to show cause as to why an inquiry should not be held and penalty be not imposed on it under Sections 15 A(a) of the SEBI Act and Section 23H of the SCRA. The SCN, inter alia, alleged the following:

   a. *It was observed that there were transfers of shares in physical form between certain entities and subsequent sale in the market. Further, the sale proceeds had gone to the entities associated to Rama Krishna, then MD of the company. The Noticee-wise analysis of off-market/ market transfer/sale of shares and flow of sale proceeds are given as under:*

   b. ***Kalpana Komati - Noticee No.2*** *was one of the shareholders of the Company. She had transferred 1,09,944 physical shares to Noticee No.3 on August 29, 2016 as per the details obtained from RTA viz. Venture Capital and Corporate Investments Private Limited (RTA). As per the Share transfer form the consideration to be paid was Rs. 30,78,432 /-. However, as per bank a/c statement (Bank of America a/c no. 0xxx xxxx xxx3) of Noticee No.3 submitted along with his reply dated February 11, 2020, USD 5,000 was transferred on December 24, 2012 and USD 45,000 was transferred on December 26, 2012 to Noticee No.2. As per the USD-INR exchange rate of the said dates amount arrived at Rs. 27,53,400 (54.96*5000 + 55.08*45000).*

c. It was noted that there has been a delay of 1,342 calendar days between the receipt of consideration and actual transfer of shares. SEBI had sought for the required information and documents, inter alia, regarding the off market transfer of physical shares to Noticee No.3 as well as the delay between the consideration paid and actual transfer of physical shares, relationship with the company/its managing director Rama Krishna and other promoter/directors etc. from Noticee No.2 vide email dated August 30, 2022 on the email id as available in the UCC details. However, Noticee No.2 did not respond to any of the said email. Thereafter, reminder email dated September 30, 2022 was also issued to her, however, no response was received on the same. It is noted that none of the emails returned undelivered.

*d. **Trivikram Kolukuluri (Noticee No. 3)** - Noticee No.3 was Senior Vice President, of the company during August 13, 2012 to December 31, 2014. It is observed from the Securities Transfer Form (SH-4) dated October 28, 2016 obtained from RTA that he had transferred 1,09,944 physical shares to Noticee No.4. The consideration amount for the same was Rs.36,28,152 /-.*

e. Accordingly, SEBI sought explanations in this regard, vide Summons dated January 28, 2020 from the Noticee No.3. In this regard, vide his reply dated February 11, 2020, had stated that "I intended to invest in the equity shares of the company. The transferor Ms. Kalpana Komati is unrelated and not a family friend. I identified Ms. Kalpana Komati through common friend J.P. Vejendla." Further, vide the said letter Noticee No.3 had also stated that "The amount of USD 50000 was out of my employment from abroad which was subject to tax. The transfer of shares was made in the year 2016 despite the amount towards the transfer was made in year 2012." Noticee No. 3 had also responded to SEBI's query regarding the nature of relationship with Noticee No.4 and the consideration received from him.

f. *However, the Bank statement of Noticee No.4 (A/C No. 1xxxxxxxxxxxxx1 with Indian Overseas Bank) was analysed and it did not reveal such amount paid by him to Noticee No.3. With regard to the same, Summons dated August 29, 2022, followed by reminder summons dated September 26, 2022 were issued to Noticee No. 3 and were duly delivered. However, no response was received from Noticee No.3. Thereafter vide summons dated October 21, 2022, Noticee No.3 was advised to furnish certain information and appear in person before the Investigating Authority (IA) through Speed Post and the said summons was also served to Noticee No.3 on his e-mail. Finally, Vide email dated November 5, 2022, Noticee No.3 responded to the summons, requesting for extension of time to reply to the afore-mentioned summonses. Further he also requested a copy of summons dated January 28, 2020 issued to him and his reply dated February 11, 2020, which were provided to him vide email dated November 07, 2022.*

g. *Subsequently, vide his reply dated November 16, 2022, as regards delay between consideration paid and actual transfer of physical shares from Noticee No.2 to him, Noticee No.3 stated that "I would like to clarify that I gave interest-free loan to Komati in 2012. In 2015-16 (exact details not available), she transferred the shares of BCL to me in lieu of that." Also, as regards the query of non-receipt of consideration from Silamkoti Abilash for transfer of physical shares to him on November 17, 2016 and role of Rama Krishna in the said transfer, Noticee No.3 had submitted that "My liabilities were set off against the transfer of such shares. Mr Rama had no role in it except that he knew Silamkoti." Further vide email dated November 18, 2022 he also requested to take on record his response dated November 16, 2022 and exempt him from statement recording at Mumbai on the ground of his work pre-occupancies.*

h. *It is noted that earlier Noticee No.3 submitted that he did not receive any consideration and later he submitted that his liabilities with Noticee No.4 were set-off. Thus, clarification was sought in this regard vide mail dated November 21, 2020,* *to which he responded, vide his reply dated November 29, 2022. However, his reply was considered to be evasive as well as contradictory and he also did not provide any documentary evidence with respect to receipt of the said consideration for transfer of physical shares to Noticee No.4.*

i. ***Silamkoti Abilash (Noticee No.4)*** *received 1,09,944 physical shares of BCL from Trivikram Kolukuluri (Noticee No.3) through off-market transaction. He dematerialised the said shares on February 07, 2018 and credited in his demat account on February 23, 2018. Thereafter, as per the trade log, all these shares were sold in the market by Noticee No.4 on February 26, 2018 and February 27, 2018 and obtained Rs. 96,42,845 as a sale consideration.*

j. *During the investigation, information was sought from him vide summons dated January 2, 2020 regarding the said off-market transaction and subsequent transfer of sale proceeds to certain entities. In this regard, vide email dated January 28, 2020, Noticee No.4 submitted that "More than 10 years Back I have given hand loan to seller and my repeated remainders she finally agrees and transfer the shares in my name in the year 2017, subsequently I convert it into Electronic mode and sold in the market." Further he also submitted that "I have made agreement for my house purchase and redevelopment I have taken a loan from L Naga Visweswara rao and Munider Raja Arram and others, Once I sold my shares I have cleared all my liabilities and retain my Property. Lot of pressure from those who give me money as loan*."

k. *Thereafter, vide Summons dated August 29, 2022 issued to Noticee No.4, detailed information was sought with regard to the off market transfers issued vide SPAD, which was duly delivered and also the said summons was sent to him vide e-mail dated September 01, 2022, which was duly delivered, but the Noticee did not give his response to the said summons. A reminder summons dated September 26, 2022 was issued to him through speed post AD and the scan copy of the same was also* *sent to him vide email dated September 28, 2022. While the said physical summons returned undelivered with remarks "addressee moved", the email sent to Noticee No.4 had not return undelivered.*

l. *As mentioned above, the Noticee No.4 sold 1,09,944 shares in the market and obtained the sale proceeds of Rs.96,42,845. Out of the said amount, Rs.90,50,000 /- (93.85 %) were transferred to the 3 entities viz. L Naga Visweswara Rao, brother of Rama Krishna (LNV Rao), Muninder Raja Arram (brother-in law of Rama Krishna) and Mallayagari Srinivas Reddy (Independent Director of BCL) who are related/associated with Rama Krishna, MD of the company. Details of fund transferred by him are as given in the following table:*

Sr. No.	Date	Name	Amount (Rs.)
1	03.03.18	Mallayagari Srinivas Reddy	10,50,000.00
2	03.03.18	LNV Rao	60,00,000.00
3	05.03.18	Muninder Raja Arram	20,00,000.00
		Total	90,50,000.00

m. *Further, It was observed during the investigation that Noticee No. 4 did not provide any document in support of consideration paid to Noticee No.3 upon receipt of 1,09,944 shares in off-market. Further, upon analysis of the bank statement of Noticee No.4 (A/C No. 1xxxxxxxxxxxx1 with Indian Overseas Bank) it did not reveal any amount paid by him to Noticee No.3.*

Analysis of flow of funds post sale of shares in the market by Silamkoti Abilash

n. *As mentioned above, 1,09,944 shares were sold in the market by Noticee No.4 and received Rs.96,42,845 as a sale consideration. It is noted from the bank account statement of Noticee No.4 (A/C No- 173101000013111 of Indian Overseas Bank) that he has transferred a total of Rs.90,50,000 /- (93.85 %) to the 3 entities viz. LNV Rao (brother of Rama Krishna), Muninder Raja Arram (brother-in law of Rama Krishna) and Mallayagari Srinivas Reddy (Independent Director of BCL) who are* *related/associated with Rama Krishna, MD of the company. Further, it was observed that LNV Rao had received Rs.60 Lakh on March 03, 2018, Muninder Raja Arram had received Rs.20 Lakh on March 05, 2018 and Mallayagari Srinivas Reddy had received Rs.10,50,000 on March 03, 2022 from Noticee No. 4 and thereafter, LNV Rao had transferred the above received amount entirely to Kepler Information Systems Pvt Limited (Noticee No.1), entity promoted by MD Rama Krishna on March 03, 2018, Muninder Raj Arram had transferred the above amount entirely to Rama Krishna on March 08, 2018 and Mallayagari Srinivas Reddy transferred Rs. 7,00,000/- to Muninder Raja Arram on March 06, 2022, as observed from their respective bank statements.*

o. Accordingly, summons was issued to LNV Rao, Muninder Raja Arram and Mallayagari Srinivas Reddy, regarding fund received by them from Noticee No.4, relationship with company/ its promoter/directors, subsequent transfer of the above mentioned money received, etc.

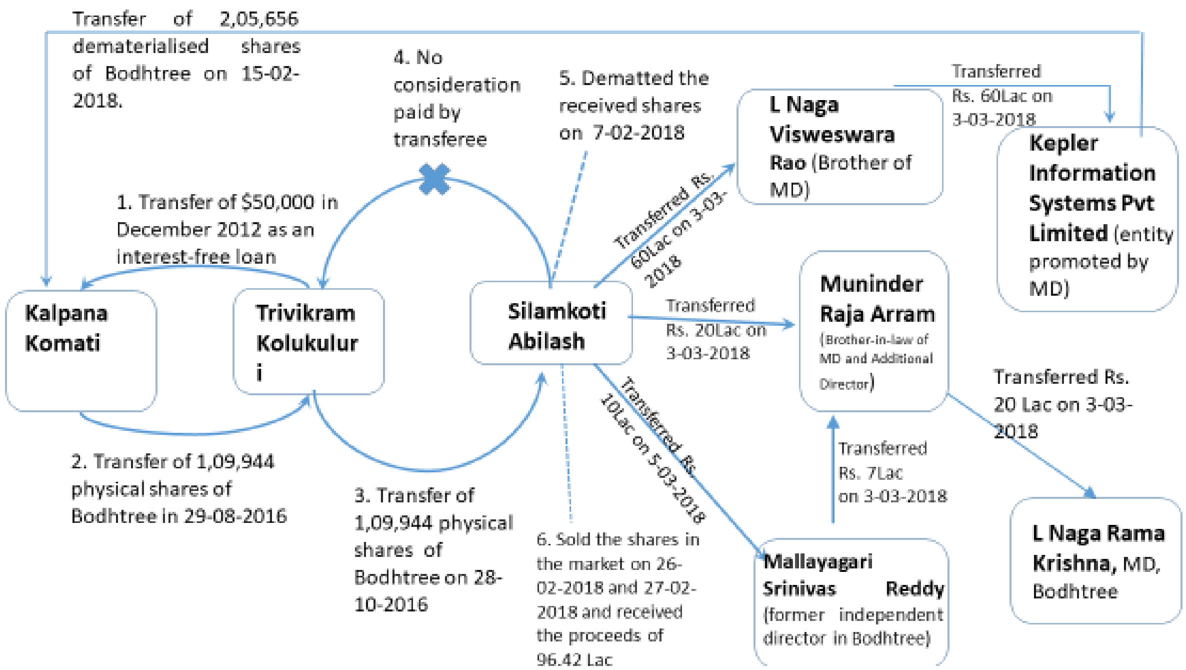
p. In this regard, Mr.LNV Rao, vide his reply email dated November 16, 2022, had stated that the receipt of funds from Noticee No.4 was a result of an outstanding loan given to him i.e. Noticee No.4 through cash in tranches over a period of time and as regards transfer of Rs.60 Lakh to Noticee No.1, he stated that "The amount was lent to Kepler." However, no supporting documentary evidences was submitted by him in support of his claim. Then, Mr. Muninder Raja Arram, vide his reply email dated November 11, 2022, stated that the receipt of funds from Noticee No.4, was result of his outstanding loan that was given to Silamkoti Abilash through cash in different intervals, which accumulated over time. He also mentioned that "the transactions were undertaken to help friends and family based on trust, not borne out of commercial relationships – agreements were not required." Further, as regards the transfer of Rs.20 Lakh to L Naga Rama Krishna, Noticee No.4 stated that Mr Rama was his brother-in-law Thereafter, Mr. Mallayagari Srinivas Reddy, vide his reply email dated November 11, 2022, he stated that "I have no direct *relation/association with Mr Silamkoti Venkat Abilash. It was a short-term loan repayment, and I also needed additional funds. So my long-standing friend, Muninder, arranged it. Muninder and I have been financially supporting each other on a need basis for quite some time. He had arranged the funds at my request. After a short while, I returned INR 7Lakh to him. My financial transactions are all accounted for and can be verified from my Bank Statements. Muninder and I have been friends for 15 years and also business partners." Further he submitted- "I was an independent director in BCL from February 16, 2019 to August 13, 2021."*

q. ***Kepler Information Systems Pvt Ltd (Noticee No.1)*** *was incorporated on October 12, 2011 and is an associated company of BCL. Further, Mr. Rama Krishna, the MD of BCL was also the promoter/director of Noticee No.1. Mr. Rama Krishna and Mr. LNV Rao were the promoters/directors of Noticee No.1 at the time of incorporation of Company. Also, Mr. Rama Krishna and Ms. Munaeshwari Lakkimsetti (wife of Rama Krishna) together hold 99.6 % of shares in Noticee No.1. Further, Munaeshwari Lakkimsetti has been the director of Noticee No.1 since January 30, 2018.*

r. *As already mentioned above, Noticee No.4 had transferred Rs.60,00,000 to LNV Rao, which was subsequently transferred to Noticee No.1, an entity promoted by Rama Krishna on March 03, 2018. Therefore, summons dated February 2, 2023 issued to Noticee No.1, seeking required details in the matter, however, as per India Post, aforementioned summons returned undelivered with remark "addressee left without instructions". Thus, another Summons dated February 9, 2023 was issued to him on its updated address as per the MCA database. Scan copy of afore mentioned summons was also sent on Noticee No.1's email and email addresses of its promoter/directors namely Rama Krishna and Munaeshwari Lakkimsetti, vide email dated February 09, 2023. In this regard, Noticee No.1 had submitted its reply vide email dated February 17, 2023, wherein as regards the receipt of funds from LNV Rao, it stated that "said amount was taken as a loan from Mr LNV Rao. Bank*

Statements are the evidence of the said loan". However, no details regarding the loan agreements have been furnished by Kepler.

s. *The flow of shares and funds are summarized in the flow chart given below:*



t. *Vide Summons dated January 23, 2023 BCL was sought the information inter-alia regarding source of shares for Noticee No.2. In its reply vide email dated January 25, 2023, BCL informed that Noticee No.2 became the shareholder of the Company for the first time on December 31, 2012 and she acquired shares through Preferential Allotment on December 31, 2012.*

u. *It is observed from the off-market transaction data provided by CDSL vide email dated September 01, 2022 that off-market transaction took place in the scrip of BCL between Noticee No.1 and Noticee No.2. The details of the said off-market transaction are as follows:*

Off-Market transfer in the shares of BCL between Noticee No.1 and Noticee No.2

Depository	Scrip name	ISIN	Date	Source Client Name	Target Client Name	Source Client PAN	Target Client PAN	Source Client BOID	Target Client BOID	Transferred Qty
CDSL	Bodhtree Consulting Ltd- Equity Shares	INE104F01011	15/02/2018	Kepler Information Systems Pvt Ltd .	Kalpana Komati	AAECK5818R	ASAPK9943L	1301440001497451	1204720013528866	2,05,656

v. *From the above table it is observed that the closing price of the scrip on February 15, 2018 was Rs.104.95 on BSE. Thus, the value of the said transaction should have been approximately Rs.2,15,83,597/-.*

w. *In this regard, vide mail dated January 25, 2023 DIS slip for the said off-market transaction was sought from the DP viz. IIFL Securities Ltd., vide mail dated January 30, 2023 informed that – "In March 2021 the demat accounts of Karvy Stock Broking, has been acquired by IIFL securities Ltd in the form of bidding process conducted by NSDL/ CDSL. The database of accounts were actually made available to IIFL only in the last week of March 2021, therefore the demat operations activities could start only after March 31, 2021.Accordingly, the Delivery Instruction Slip (DIS slip) for the said transaction of the client viz. Kepler Information Systems Pvt Ltd. (PAN AAECK5818R) dated 15/02/2018 is not available with us."*

x. *Accordingly, summons dated February 9, 2023 issued to Noticee No.1, seeking the information inter-alia regarding reasons for such transfer of shares in off market, details of consideration paid along with proof and relationship with the transferee. Noticee No. 1 replied vide email dated February 17, 2023, requesting SEBI for addition information/documents. This is despite the fact that Annexure to summons dated February 9, 2023 issued to Noticee No.1 clearly mentioned the date of transfer, quantity of shares and the name of the transferee.*

y. It is noted that, no details/documents were provided by Noticee No.1, regarding reasons for such transfer, consideration paid and relationship with the transferor. Further, banks statements of Noticee No.1 (Indusind Bank a/c statement 2xxxxxxxxx1 & 6xxxxxxxxx7 and IOB a/c no. 0xxxxxxxxxxxxx7) and Noticee No.2 (State Bank of India a/c no. 3xxxxxxxxxx1) of corresponding period did not reflect the equivalent amount for the said transaction.

z. It is therefore observed that the afore-mentioned off-market transactions was not in conformity with the 'spot delivery contract' as stipulated u/s 2(i) of SCRA, 1956.

aa. From the above, it is observed that in order to be a legal transaction, the said off market transaction would have to qualify as a spot delivery contract u/s 2(i) of SCRA, 1956 i.e. actual delivery of shares and the payment of consideration should be on same day as the date of contract or on the next day. In the light of the above provisions of SCRA, 1956 and analysis of off-market transactions done by Noticees No. 1 to 4 are not in conformity with the provisions related to spot delivery contract in SCRA, 1956 as they did not take place within the timeline prescribed for spot delivery contract as specified above.

bb. Thus, the Noticee No. 1 to 4 are alleged to have violated Section 16 of SCRA, 1956 read with SEBI Notification LAD-NRO/GN/2013-14/26/6667 dated October 03, 2013, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956.

cc. Further, Noticee No. 4 by failing to furnish the documents/ information as sought vide summons dated August 29, 2022 and reminder summons dated September 26, 2022, which were issued under Section 11C(3) of the SEBI Act, he is alleged to have violated the said provision of law.

Correspondence with Noticee No. 1

6. Vide email dated July 16, 2023, Noticee No. 1 sought inspection of the documents mentioned therein. Subsequently, vide hearing notice dated September 20, 2023, Noticees were granted an opportunity of being heard on September 26, 2023.

7. Vide letter dated September 20, 2023, Noticee No. 1 again sought inspection of documents. Further vide letter dated September 25, 2023, forwarded the names of its Authorised Representatives to appear for the hearing on September 26, 2023.

8. As per the minutes of the hearing conducted on September 26, 2023 Noticee No. 1 was informed that their request for inspection of documents has been acceded to.

9. Vide email dated November 17, 2023, Noticee No.1 reiterated its request for inspection of documents.

10. Vide letter dated February 28, 2024, Noticee No. 1 was provided with the additional documents sought vide email dated July 16, 2023. Noticee No. 1 was further advised to file its reply by March 10, 2024. Further, vide notice of hearing dated February 29, 2024, Noticee No. 1 was granted an opportunity of hearing on March 11, 2024.

11. Vide email dated March 9, 2024, Noticee No 1 sought inspection of documents and to postpone the hearing scheduled. Vide email dated March 11, 2024, Noticee No. 1 was granted opportunity for inspection of documents on March 15, 2024. Vide email dated March 14, 2024, Noticee No. 1 was requested to confirm its attendance for the inspection scheduled on March 15, 2024. Vide email dated March 14, 2024, Noticee No. 1 requested to reschedule the inspection and submitted that after the inspection, Noticee No. 1 may be granted four weeks' time to peruse the data/information and formulate a comprehensive requisition.

12. Therefore, vide email dated June 11, 2024 the inspection was scheduled on June 19, 2024 which Noticee No. 1 requested to reschedule.

13. The inspection of the documents was conducted on June 24, 2024 which was attended by AR of Noticee No 1. In minutes of the inspection recorded, it was mentioned the BSE report mentioned in the SCN pertains to an earlier matter/investigation and hence cannot be shared.

14. Vide notice of hearing dated June 24, 2024, Noticee No. 1 was advised to file reply to the SCN by July 01, 2024 and appear for the hearing on July 03, 2024. Vide email dated June 28, 2024, Noticee No. 1 was informed that hearing granted to it has been postponed.

15. Vide email dated June 30, 2024, Noticee No. 1 reiterated its request for inspection of the documents. Vide email dated July 01, 2024, Noticee no. 1 was informed that relevant documents have already been provided and a detailed reply may be provided not later than July 15, 2024.

16. Vide email dated July 12, 2024, Noticee No. 1 sought further documents in the matter which was reiterated vide email dated July 27, 2024. In this regard, vide Hearing Notice dated July 31, 2024 Noticee No. 1 was informed that pursuant to transfer Shri Shashi Kumar Valsakumar, vide communique dated July 29, 2024, the undersigned has been appointed as the Adjudicating Officer. Noticee No. 1 was informed that all the pertinent information and relied upon documents available before the Adjudicating Officer has already been provided to Noticee No. 1. Noticee No.1 was further advised to file reply to the SCN by August 14, 2024. Noticee No. 1 was also advised to appear for the personal hearing on August 26, 2024.

17. Vide email dated August 14, 2024, Noticee No. 1 again sought inspection of the documents mentioned in his email dated July 25, 2024. Vide email dated August 16, 2024, Noticee No. 1 was informed that all the relevant information and documents in the matter have already been provided to Noticee No. 1, and therefore, Noticee No. 1 was advised to file reply to the SCN on or before August 20, 2024 and appear for the hearing on August 26, 2024.

18. However, Noticee No. 1 vide email dated August 23, 2024, again requested to inspect the documents mentioned in email dated July 16, 2023. In this regard, vide email dated August 28, 2024, Noticee No. 1 was informed that all the documents available on record, relevant for the proceedings and available with the Adjudicating Officer in the matter have already been provided to it. Therefore, it was advised to file its reply on or before September 06, 2024 and appear for the hearing on September 10, 2024.

19. Noticee no. 1 vide email dated September 06, 2024, again reiterated its request for inspection of documents. Vide email dated September 09, 2024, Noticee No. 1 was informed that all the documents available on record, relevant for the proceedings and available with the Adjudicating Officer in the matter have already been provided to it. It was advised to file his reply on or before September 19, 2024 and appear for the hearing on September 25, 2024.

20. Vide email dated September 19, 2024, Noticee No. 1 filed its reply to the SCN and inter alia submitted the following:

20.1 The transactions under scrutiny pertain to the financial years 2016-17 and 2017-18. However, the adjudication proceedings in this matter have been initiated only in 2023, after a delay of nearly five years. It is a well-established principle of law that regulatory actions should be initiated and concluded within a reasonable time to avoid undue prejudice to the parties involved. The Hon'ble Securities Appellate Tribunal (SAT) has repeatedly held that undue delay can prejudice the noticee, and such proceedings should be quashed.

20.2 our ability to prepare a comprehensive defence has been severely handicapped by SEBI's non-provision of critical documents referred to and relied upon in the SCN. Despite repeated requests, key documents have not been provided, which has compromised our ability to formulate an adequate response.

Allegation Pertaining to Share Transfer by Kepler to Kalpana Komati

20.3 *With respect to the alleged transfer of 2,05,656 shares of Bodhtree Consulting Limited (BCL) from Kepler to Mrs. Kalpana Komati on 15th February 2018, we submit that this transfer was not pursuant to any sale or commercial contract but was a gift.*

20.4 *Gifts, by their nature, do not involve consideration, hence do not fall under the definition of a spot contract, for which an essential ingredient is the existence of 'consideration'. Thus, gifts cannot be regulated under Section 2(a) or Section 2(i) of the SCRA, 1956. Further, your good office has not presented any document in support of the allegation that such transfer fall under the purview of spot contract.*

20.5 *Additionally, due to the inordinate delay in initiating the present proceedings, we do not have supporting documentation for the gift transfer. Moreover, the persons and consultants involved in this transfer are no longer in touch with the Company. Had your good office inquired into this transfer at the relevant time, we would have been able to provide you with supporting documents.*

Allegation Pertaining to Receipt of Rs. 60 Lakhs from L. Naga Visweswara Rao

20.6 *Regarding the receipt of Rs. 60 lakhs from Mr L. Naga Visweswara Rao, we submit this amount received was a legitimate loan between Kepler and Mr. Visweswara Rao. It was not connected to any alleged improper transactions involving BCL shares. Mr. Visweswara Rao is the elder brother of Mr. L. Naga Rama Krishna, who was the then-director of Kepler. Mr. Visweswara Rao has been a shareholder of the Company since 2011 and also served as the promoter and director of the Company from 2011 to 2014.*

20.7 *We further submit that this was not an isolated transaction, but part of a routine financial arrangement within the family. However, while we do not have a formal loan agreement for this specific transaction, our bank statements reflect the receipt of funds from Mr Vishweswara Rao over the course of time.*

Non-Involvement in Other Transactions

20.8 *We wish to categorically state that Kepler Information Systems Pvt. Ltd., its directors, and officers have had no involvement, information, or knowledge of any other transactions or share transfers between the persons or entities mentioned in the SCN. Kepler is not connected or related to the transactions alleged to have taken place between third parties. We have had no direct or indirect role in the execution, facilitation, or processing of any transactions outside those specifically detailed regarding Kepler, and as dealt with in the preceding paragraphs.*

20.9 *Any such transactions that occurred between other individuals or entities are entirely unrelated to us, and we are not privy to any details or dealings related to them. Kepler and its representatives, therefore, cannot be held accountable for transactions over which we have no control, involvement, or knowledge.*

21. The AR of the Noticee No. 1 appeared for the hearing on September 25, 2024 reiterated the submissions made vide email dated September 19, 2024 and undertook to submit the bank statements/documents with respect to the loan arrangement with Mr. L Naga Visweswara Rao. However, the same was not filed by Noticee No. 1.

Correspondence with Noticee No. 2

22. The SCN issued to Noticee No. 2 through Speed Post returned undelivered with the remark “unclaimed”. Subsequently, vide hearing notice dated September 20, 2023, Noticee No. 2 was granted an opportunity of being heard on September 26, 2023.

23. Subsequently vide letter dated July 31, 2024, Noticee No. 2 was served the SCN through Speed Post at her last known address in Vijaywada, Andhra Pradesh, India as well as through email at the email address available on record. The proof of delivery of the same is available on record.

24. Subsequently, vide hearing notice dated September 24, 2024, Noticee No. 2 was granted another opportunity of hearing on October 04, 2024. The said hearing notice was sent to both the available addresses of the Noticee No. 2. The said hearing notice was served on Noticee No. 2 through digitally signed email as well as the last known address in Vijaywada, Andhra Pradesh, India.

25. However, Noticee No. 2 neither replied to the SCN nor appeared for the hearing.

Correspondence with Noticee No. 3

26. Vide email dated June 30, 2023, Noticee No. 3 sought inspection of documents. Vide hearing notice dated September 20, 2023, Noticee No. 3 was granted an opportunity of being heard on September 26, 2023. Subsequently, vide email dated September 25, 2023, Noticee No. 3 sought inspection of documents and as also forwarded the name of its Authorised Representative (AR). As per the minutes of the hearing conducted on September 26, 2023, Noticee No 3 was informed that his request for inspection of documents has been acceded to.

27. Vide letter dated February 28, 2024, Noticee No. 3 was informed of the appointment of Shri Shashi Kumar Valsakumar and was also provided the additional documents sought vide email dated June 30, 2023. Noticee No. 3 was further advised to file his reply by March 10, 2024. Further, vide notice of hearing dated February 29, 2024, Noticee No. 3 was granted an opportunity of hearing on March 11, 2024.

28. Vide email dated March 08, 2024, Noticee No. 3 submitted that the requested documents have not been completely provided and sought inspection of all relevant documents and postponement of the hearing.

29. Therefore, vide email dated March 11, 2024, Noticee No. 3 was granted opportunity for inspection of documents on March 15, 2024.

30. Vide email dated March 14, 2024, Noticee No. 3 submitted that the data/documents received from SEBI are voluminous but also complex requiring thorough analysis. Therefore, Noticee No. 3 requested to reschedule the inspection for want of sufficient time to review the information provided. Further, vide email dated June 11, 2024, Noticee No. 3 was granted opportunity to inspect the documents on June 19, 2024. Subsequently, vide email dated June 14, 2024, Noticee No. 3 forwarded the name of his AR.

31. The AR of the Noticee No. 3 conducted the inspection of the documents on June 19, 2024. In minutes of the inspection recorded, it was mentioned the BSE report mentioned in the SCN pertains to an earlier matter/investigation and hence cannot be shared.

32. Vide notice of hearing dated June 24, 2024, Noticee No. 3 was advised to file reply to the SCN by July 01, 2024 and appear for the hearing on July 03, 2024. Vide email dated July 01, 2024, Noticee No. 3 was informed that the hearing scheduled on July 01, 2024 has been postponed and the fresh date shall be intimated separately. Subsequently, vide Hearing Notice dated July 31, 2024 Noticee No. 3 was informed pursuant to transfer Shri Shashi Kumar Valsakumar, vide communique dated July 29, 2024, the undersigned has been appointed as the Adjudicating Officer. Noticee No. 3 was informed that all the pertinent information and relied upon documents available before the Adjudicating Officer has already been provided to Noticee No. 3. Noticee No. 3 was further advised to file reply to the SCN by August 14, 2024. Noticee was also advised to appear for the personal hearing on August 26, 2024.

33. Vide email dated August 13, 2024, Noticee No. 3 again sought inspection of the documents mentioned in his email dated July 25, 2024. Vide email dated August 14, 2024, Noticee No. 3 was informed that all the relevant information and documents in the matter have already been provided to Noticee No. 3, and therefore, Noticee No.

3 was advised to file reply to the SCN on or before August 20, 2024 and appear for the hearing on August 26, 2024.

34. However, Noticee No. 3 vide email dated August 24, 2024, again requested to inspect the documents. In this regard, vide email dated August 28, 2024, Noticee No. 3 was informed that all the documents available on record, relevant for the proceedings and available with the Adjudicating Officer in the matter have already been provided to him. And therefore he was advised to file his reply on or before September 19, 2024 and appear for the hearing on September 25, 2024.

35. Subsequently, vide email dated September 06, 2024, Noticee No. 3 reiterated his request for inspection. Vide email dated September 09, 2024, he was informed that all the documents relevant to the proceedings have already been provided and therefore, was granted 7 days to file reply i.e. September 17, 2024. Noticee No. 3 was further advised to appear for hearing on September 25, 2024.

36. Subsequently, vide email dated September 23, 2024, Noticee No. 3 filed reply to the SCN and *inter alia* submitted the following:

36.1 First of all, I humbly submit that I deny all allegations and contentions raised against me regarding my involvement in fraudulent activity or any violation of the provisions of the SEBI Act, 1992 (SEBl Act), SEBI (PFUTP) Regulations, 2003 (PFUTP Regulations), and Securities Contracts Regulation Act, 1956 (SCRA, 1956).

36.2 Secondly, I would like to bring to your notice the significant delay in the initiation of these proceedings. The transactions under scrutiny pertain to the year 2016, yet the adjudication process was only initiated in 2023, more than seven years later. It is well-established that regulatory authorities must act within a reasonable timeframe to avoid undue prejudice to the noticee.

36.3 SEBI has failed to provide me with a complete set of documents referred to or relied upon in the SCN.

Receipt of Shares from Kalpana Komati and Associated Financial Arrangements

36.4 On 29 August 2016 (exact date retrieved from the SCN), I received 1,09,944 shares of BCL from Ms. Kalpana Komati through an off-market transaction. The consideration for this transfer was specified as ₹36,28,152 in the share transfer form (SH-4). However, the actual transaction was in the form of loan repayment.

36.5 A common friend, Mr. JP Vejendla, introduced me to Ms. Komati, who was in need of certain funds. I provided a loan of $50,000 to Ms. Komati in 2012, which was transferred through my bank account in two tranches: USD 5,000 on 24 December 2012 and USD 45,000 on 26 December 2012. This loan was interest-free and granted based on my long-standing mutual understanding with Mr. Vejendla. Later, in 2016, I intended to invest in the equity shares of BCL and again approached my contacts for the same. Mr Vejendla informed me that Ms Komati held certain shares of the Company and that I could claim shares from her to set off the loan disbursed to her back in 2012. Hence, the shares transferred to me in August 2016 were meant to set off the outstanding loan amount, and as a result, no separate monetary consideration was exchanged at the time of the share transfer.

36.6 While the share transfer documentation may indicate a delay of 1,342 calendar days between the payment of consideration and the transfer of shares, this delay was due to the personal financial arrangement between Ms Komati and me, facilitated by our common friend, which included an understanding that the transfer of shares would settle the loan amount. Therefore, no breach of trust or wrongful intent was involved in the delayed transfer, as the consideration had been effectively provided through the earlier loan.

Off-Market Share Transfer to Silamkoti Abhilash

36.7 *In October 2016, I started observing a dip in the share price of BCL. Hence, on 28 October 2016, I transferred the same 1,09,944 shares of BCL to Mr. Silamkoti Abhilash. This transfer was part of a broader personal financial settlement, where I owed a significant amount in personal liabilities to some private lenders. It is important to clarify that I do not have any direct personal relationship with Mr. Silamkoti, and the transfer was carried out solely as a means of settling these outstanding obligations. The arrangement was based on instructions given by my private lenders, and there was no direct financial exchange between Mr. Silamkoti and me.*

36.8 *I submit that due to the long passage of time, about seven years since this transaction was made and more since I had outstanding liabilities towards private lenders, and due to my advanced age and loss of memory, I might have made certain confusing statements with respect to the said transaction. Had your good office asked me this question back in 2016, I would have been able to provide a clear picture of this transfer. However, due to the delay in the start of the present proceedings, I have been utterly prejudiced in providing a clear picture as well as any documentation in support of my defence.*

36.9 *I am again clarifying that while no direct payment was made to me for these shares as part of any 'consideration', there was no requirement for the same. This share transfer was part of a liability set-off arrangement between certain private lenders and myself – I am no longer in touch with these lenders, nor do I have their contact information. Additionally, I am not aware of any liability or arrangement between these private lenders and Mr Silamkoti, if any, as I did not consider it relevant to my understanding.*

36.10 I must reiterate that these transactions were conducted to resolve personal financial matters rather than as formal securities transactions intended for speculative purposes. The timeline for the transfer of shares was a result of personal financial arrangements and the settlement of personal liabilities. Since, in both instances, the transfer of shares was meant to setoff loans, there was no 'consideration' or requirement for any 'delivery' of securities. Thus, these transfers cannot be called 'spot delivery contracts' .

36.11 The transactions mentioned in the SCN were personal financial arrangements with no commercial or speculative intent. As an individual, my dealings were not bound by the same documentation standards that apply to corporate entities.

37. The AR of the Noticee No. 3 appeared for the hearing on September 25, 2024 reiterated the submissions made vide email dated September 23, 2024 and undertook to submit the bank statements with repsect to the loan granted to Ms. Kalpana Komati which was filed by Noticee No. 3 on September 25, 2024

<u>Correspondence with Noticee No. 4</u>

38. The SCN issued to Noticee No. 4 returned undelivered with the remark "left" by the postal authorities. Subsequently, vide hearing notice dated September 20, 2023, Noticee No. 4 was granted an opportunity of being heard on September 26, 2023. However, the same returned undelivered.

39. Therefore, in terms of Adjudication Rules, SCN was served on Noticee No. 4 through newspaper advertisement on June 13, 2024 in one of the leading national newspapers in English, Hindi and in vernacular language in Telugu at Hyderabad and, advising Noticee No. 4 to collect the SCN from SEBI office.

40. However, Noticee No. 4 did not collect the SCN. Therefore, in terms of the Adjudication Rules, hearing notice was served on Noticee No.4 through newspaper

advertisement on September 24, 2024 in one of the leading national newspapers in English, Hindi and in vernacular language in Telugu at Hyderabad and, advising Noticee No. 4 to appear for the hearing before the Adjudicating Officer on September 26, 2024. However, Noticee No. 4 neither appeared for the hearing nor contacted the SEBI office.

CONSIDERATION OF ISSUES AND EVIDENCE

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

I. **Whether *Noticee Nos. 1 to 4 have violated Section 16 of SCRA read with SEBI Notification LAD-NRO/GN/2013-14/26/6667 dated October 03, 2013, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA?***

II. **Whether *Noticee No. 4 has violated Section 11C(3) of SEBI Act?***

III. Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 23h of the SCRA and Section 15 A(a) of the SEBI Act?

IV. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act and Section 23J of the SCRA?

42. Before proceeding with the matter on merits, it would be relevant to reproduce the provisions of law:

*"**SCRA***

2. Definitions.

In this Act, unless the context otherwise requires,—

….

(i) "spot delivery contract" means a contract which provides for,—

(a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;

13. Contracts in notified areas illegal in certain circumstances.

If the Central Government is satisfied, having regard to the nature or the Volume of transactions in securities in any [State or States or area] that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognized stock exchanges in such State or States or area or through or with such member shall be illegal:

[Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall —

(i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;

(ii) Require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.]

16. Power to prohibit contracts in certain cases.

(1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the

Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal.

18. Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

(1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government1 is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.

SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 3, 2013

In exercise of the powers conferred by subsection (2) of section 28 and sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India notification number S.O. 573(E), dated the 30 th July, 1992 issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as 'the Board') hereby rescinds the notification number S.O.184(E), dated the 1 st March, 2000, except as respects things done or omitted to *be done before such rescission, and declares that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than a contract falling under any one or more of the following, namely:-*

(a) spot delivery contract;

(b) contracts for sale or purchase of securities or contracts in derivatives, as are permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognised stock exchange;

(c) contracts for pre-emption including right of first refusal, or tag-along or drag along rights contained in shareholders agreements or articles of association of companies or other body corporate;

(d) contracts in shareholders agreements or articles of association of companies or other body corporate, for purchase or sale of securities pursuant to exercise of an option contained therein to buy or sell the securities, where-

(i) the title and ownership of the underlying securities is held continuously by the selling party to such contract for a minimum period of one year from the date of entering into the contract;

(ii) the price or consideration payable for the sale or purchase of the underlying securities pursuant to exercise of any option contained therein, is in compliance with all the laws for the time being in force as applicable; and

(iii) the contract is settled by way of actual delivery of the underlying securities:

Provided that the contracts specified in clauses (a) to (d) above, shall be in accordance with the provisions of the Foreign Exchange Management Act, 1999 and rules or regulations made thereunder:

Provided further that nothing contained in this notification shall affect or validate any contract which has been entered into prior to the date of this notification.

Explanation.- It is hereby clarified that the contracts mentioned in clauses (c) and (d) above shall be valid notwithstanding anything contained in section 18 A read with clause (d) of sub-section (1) of section 23 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956):

Provided also that any contract for sale or purchase of government securities, gold related securities, money market securities, contracts in currency derivatives, interest rate derivatives and ready forward contracts in debt securities entered into on the recognised stock exchange shall be entered into in accordance with, —

(a) the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992(15 of 1992) or the directions issued by the Securities and Exchange Board of India under the said Acts;

(b) the rules made or guidelines or directions issued, under the Reserve Bank of India Act, 1934 (2 of 1934) or the Banking Regulations Act, 1949 (10 of 1949) or the Foreign Exchange Management Act, 1999 (42 of 1999), by the Reserve Bank of India;

(c) the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

SEBI Act

11 C. Investigation

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation."

43. From the material available on record, it is noted that SCN was duly served upon Noticee Nos. 2 and 4 through SPAD and public notice in newspapers, respectively. Further, the hearing notice was also served upon Noticee No. 2 and 4 through digitally signed email/newspaper publication. However, Noticee No. 2 and 4 neither submitted reply to the SCN nor appeared for hearings granted to them. In this regard, I refer to the judgment of Hon'ble Securities Appellate Tribunal (SAT) dated December 08, 2006 in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it 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".*

44. I also observe that the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that,

> "... *appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*

45. Therefore, I am constrained to proceed in the matter with respect to Noticee No. 2 and 4 on the basis of the material available on record. With respect to Noticee Nos. 1 and 3, the reply is available on record and therefore, the matter is proceeded on the basis of the same.

46. It is alleged in the SCN that the Noticees entered into off market transactions which were in violation of the provisions of the spot delivery contract under SCRA. In this regard, Noticee Nos. 1 and 3 have submitted that the transactions pertain to financial years 2016-17 and 2017-18, however, the adjudication proceedings were initiated in 2023 after a delay of five years.

47. It is noted that after the said transaction which pertain to FY 2016-17 and 2017-18, BSE was requested to examine the matter. After receipt of the examination report, investigation was initiated in the matter in 2019. The investigation was conducted against different set of entities for different violations. Information was sought from various agencies and individuals. The investigation was concluded for different set of entities at different time. It is observed from the record, the while investigating the matter with respect to the different set of entities, it was noted that the Noticees in the present matter had entered into off market transactions in violation of the provisions of law. Subsequently, the investigation was initiated against the Noticees in 2020.

48. Further, the Noticee Nos. 1 and 3 were summoned by the Investigating Authority in February 2023 and November 2022, respectively, the fact which is not denied by Noticee Nos. 1 and 3. I note that the investigation generally is a detailed process involving analysis of various data, gathering of evidences. This, generally, consumes considerable time and efforts depending on the number of entities involved, the complexity of the transactions, correspondences with the entities involved etc. In the present case, two of the Noticees i.e. Noticee Nos. 2 and 4 could not be traced and considerable time was taken during the investigation to obtain the documents pertaining to them. Subsequently, investigation was concluded in February 2023 and adjudication proceedings were initiated vide SCN dated June 2023. I find there has been no delay between conclusion of the investigation and initiation of the adjudication proceedings. Therefore, I disagree with the submission of Noticee Nos. 1 and 3 that there has been a delay in initiation of proceedings.

49. To address the contention, it is pertinent to reproduce the judgment of Hon'ble Supreme Court in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari[1]; wherein it was held that:

> "*There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would*

[1] MANU/SC/0296/2019

be reasonable time will depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc. "

50. It is pertinent to mention that Hon'ble Supreme Court in the matter of SEBI v. Sunil Krishna Khaitan[2] has observed the following:

    "*In the absence of any period of time and limitation prescribed by the enactment, every authority is to exercise power within a reasonable period. What would be the reasonable period would depend upon facts of each case, such as whether the violation was hidden and camouflaged and thereby the Board or the authorities did not have any knowledge*."

51. I also note that all relevant and relied upon documents were provided to Noticee Nos. 1 and 3 to enable them to make adequate response to the SCN. In this regard, I note that the Hon'ble SAT in the matter of Pooja Vinay Jain Vs. SEBI (SAT Appeal No. 152 of 2019, decided on March 17, 2020) held as follows:

    "*13. In the present case, the appellant neither put a plea of prejudice before the AO nor before us. It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay... Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same. Further, as explained by the learned counsel for the respondent as recorded in paragraph No. 6.4 above, large numbers of entities and transactions were analysed by SEBI which took some time.* "

52. I note that Noticees were informed vide the aforesaid summons that their off market transactions are being investigated by SEBI. Therefore, I find no merits in the submissions

[2] MANU/SC/0846/2022

of Noticee Nos. 1 and 3 that the delay has caused prejudice to their ability to defend themselves. This apart, it is to be noted that the SEBI Act, 1992 and the regulations framed thereunder have got a larger public purpose in the form of investor protection and the regulation and development of the securities market. These purposes would stand defeated if the manipulators are allowed to go scot-free just because of delay in initiating action against them. In view of the above facts, I find that no prejudice has been caused upon the Noticee Nos. 1 and 3 nor have they been able to make out a case of prejudice due to the alleged delay in initiation of proceedings. In view of this, it cannot be said that there is an inordinate delay in the issuance of SCN and hence the said contention of the Noticee Nos. 1 and 3 cannot be accepted.

53. Noticee Nos. 1 and 3 have further submitted that they were not provided complete set of documents which has compromised their ability to formulate the reply to SCN.

54. I have perused the SCN in the matter. Noticee Nos. 1 and 3 were provided all the relied upon documents along with the SCN. Subsequently, vide letters dated February 28, 2024 further documents as requested by Noticee Nos. 1 and 3 were provided to them. It is further noted that during the inspection of the documents granted to Noticee No. 1 and 3, all the documents were provided apart from BSE report (which relates to a separate investigation in the same scrip) and internal notings (which are confidential in nature). Despite that Noticee Nos. 1 and 3 did not file reply to the SCN stating that complete set of documents were not provided to them. Vide various emails, Noticee Nos. 1 and 3 were informed that they were provided all the documents available before the Adjudicating Officer in the matter. I am of the opinion that all the relevant documents available in the matter have been provided to Noticee Nos. 1 and 3.

55. In this regard, it is pertinent to note the observation of Hon'ble Supreme Court of India regarding the disclosure of documents in the matter of T Takano v SEBI[3],which is as under:

> "*39. The following principles emerge from the above discussion:*
> *(i) A quasi-judicial authority has a duty to disclose <u>the material that has been relied upon at the stage of adjudication</u>; and*
> *(ii) An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is relevant to and has a nexus to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority.*
> *Thus, the actual test is <u>whether the material that is required to be disclosed is relevant for purpose of adjudication</u>. If it is, then the principles of natural justice require its due disclosure."*

56. As can be noted from the observations of Hon'ble Supreme Court, the real test lies with the relevancy of the material for the purpose of the adjudication. In this regard, as mentioned in pre para 54, that along with the SCN, Noticee Nos. 1 and 3 were provided the copies of relied upon documents. Additionally, during the course of the present adjudication proceedings, further documents were provided to Noticee Nos. 1 and 3. Further, Noticee Nos. 1 and 3 were also informed the reasons why certain documents were not provided to them. Therefore, I am of the opinion that principles of natural justice were followed and all the material relevant to the present adjudication proceedings was provided to the Noticee Nos. 1 and 3 to enable them to frame their replies to the SCN.

57. I note that there is no other information / document being relied upon further in the present proceedings as such requested by the Noticee No. 1 and 3. Hence, above issue require

[3] MANU/SC/0210/2022

no further consideration. Therefore, in my view Noticee No. 1 and 3 had sufficient material to defend their case and no prejudice was caused upon the Noticee No. 1 and 3.

58. Now I move to deal with the merits of the matter.

ISSUE (I) Whether *Noticee Nos. 1 to 4 have violated Section 16 of SCRA read with SEBI Notification LAD-NRO/GN/2013-14/26/6667 dated October 03, 2013, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA?*

ISSUE (II) Whether *Noticee No. 4 has violated Section 11C(3) of SEBI Act?*

59. The following off market transactions in the scrip of the company entered into by the Noticees are alleged to be not in compliance of the "spot delivery contract":

Sr. No.	Transferor	Transferee	No. of shares	Date of transfer	Value (in Rs.)	Amount of consideration paid (in Rs.)	Date of payment of consideration	Delay
1.	Kalpana Komati (Noticee No. 2)	Trivikram Kolukuluri (Noticee no. 3)	1,09,944	29/08/2016	30,78,432	USD 50,000 (Rs. 27,53,400	24/12/2012 26/12/2012	1,342 calendar days
2.	Trivikram Kolukuluri (Noticee no. 3)	Silamkoti Abhilash (Noticee No. 4)	1,09,944	28/10/2016	36,28,152	NIL	NA	NA
3.	Kepler Information Systems Pvt. Ltd. (Noticee No. 1)	Kalpana Komati (Noticee No. 2)	2,05,656	15/02/2018	2,15,83,597	NIL	NA	NA

60. Section 2(i) of SCRA, 1956 defines Spot delivery contract as Spot delivery contract means a contract which provides for, - a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality (b) transfer of the securities by

the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.

61. Noticee No. 1 has claimed that off market transaction of 2,05,656 shared to Noticee No. 2 on February 15, 2018, was a gift from Noticee No. 1 to Noticee No. 2. Noticee No. 1 further submitted that gifts, by their nature, do not involve consideration, hence do not fall under the definition of a spot contract, for which an essential ingredient is the existence of 'consideration'. Thus, gifts cannot be regulated under Section 2(a) or Section 2(i) of the SCRA, 1956. In this regard, Noticee No. 1 did not produce any gift deed to substantiate its claim that it was a gift transfer which amounted to Rs. 2,15,83,597 to Noticee No. 2. Noticee No. 1 also did not provide the nature of relationship with Noticee No. 2. Therefore, it is difficult to understand/comprehend that why an entity would transfer shares worth such a substantial amount to an unrelated entity who was not associated with it in any capacity. Further, I note that there is no response of Noticee No. 2 to the SCN issued. Therefore, in view of the above, I am unable to accept the submissions of Noticee No. 1. I am of the opinion that the said transaction was not in conformity with the provision of spot delivery contract, therefore, I am of the opinion that Noticee Nos. 1 and 2 have violated Section 16 of SCRA read with SEBI Notification LAD-NRO/GN/2013-14/26/6667 dated October 03, 2013, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA.

62. Further, regarding the receipt of Rs. 60 Lakh from Mr. L Naga Visweswara Rao, Noticee No. 1 had submitted that the amount was received as a legitimate loan. However, despite undertaking to submit the loan agreement during the hearing, it is noted that the Noticee 1 has not adduced any concrete documentary evidence, like agreement entered with Mr. L Naga Visweswara Rao, sanction letter, etc., that substantiates its claim. Therefore, I cannot accept the submission of Noticee No. 1.

63. Further, Noticee No. 3 has claimed that transfer of 1,09,944 shares by Noticee No. 2 to him on August 29, 2016 was pursuant to a loan repayment. He submitted that a delay of

1,342 calendar days between the payment of consideration and the transfer of shares, was due to the personal financial arrangement between Noticee No. 2 and 3.

64. Noticee No. 3 further submitted that off market transfer of 1,09,944 shares of the company to Noticee No. 4 was a part of a broader personal financial settlement where he owed a significant amount in personal liabilities to private lenders. Noticee No. 3 further submitted that he has no personal direct relationship with Noticee No. 4. He further submitted that the arrangement was based on instruction of his private lenders and therefore, there was no financial exchange between him and Noticee No. 4. However, Noticee No. 3 has not adduced any concrete documentary evidence, like agreement entered with any private lender, sanction letter, etc. and such instructions thereof from such private lenders, that substantiates his claim. Therefore, I cannot accept the submission of Noticee No. 3. Hence, the off market transactions undertaken by Noticee Nos. 2, 3 and 4 are in violation of spot delivery contract.

65. I note that the Hon'ble Supreme Court in the matter of SEBI v. Opee Stock-Link Ltd.[4] has laid down the purpose of spot delivery contract and observed that:

"*We also note that the Securities Contracts (Regulation) Act, 1956 (SCRA) has been enacted to prevent undesirable transactions in securities by regulating the business of dealing therein, by providing for certain other matters connected therewith like regulating functioning of recognised stock exchanges and working of the members of such stock exchanges. The SCRA is a special law to regulate the sale and purchase of shares and securities and hence it prevails over the provisions of the Indian Contract Act, 1872 and Sale of Goods Act, 1930, insofar as the matters which are specifically dealt with by the SCRA. The contracts for sale and purchase of securities, as envisaged under the SCRA, can be entered into only in a prescribed manner in a notified area and that can*

[4] MANU/SC/0755/2016

only be effected through registered members of a recognised stock exchange (i.e. stock brokers) and the only exception to this is a Spot Delivery Contract."

66. In this regard, I would also like to refer to the order of Hon'ble SAT in the matter of Mrs. Bhanuben Jaisukhlal Shah vs. SEBI(Appeal No. 271 of 2009), in which Hon'ble SAT, inter alia, stated that:

> *"A reading of the aforesaid provisions would make it clear that the Central Government has the power under section 13 of the Act to make the provisions of this section applicable in any State or States or area and upon its doing so, every contract in such State, States or area is required to be entered into from the date of the notification only between the members of a recognized stock exchange or recognized stock exchanges or through or with such member(s). Section 13 also provides that contracts entered into in any other manner shall be illegal... Section 18(1) of Act, however, carves out an exception. It provides that nothing contained in Section 13 shall apply to spot delivery contracts.* ***A combined reading of Sections 13 and 18(1) would lead us to conclude that as a general rule, every contract in securities should be executed through members of recognised stock exchange (s) or through or with such member(s) and the only exception thereto is spot delivery contract(s). In other words, every contract in securities must be executed through the stock exchange mechanism unless it is a spot delivery contract. It would follow that a contract in securities which is not executed through or with member(s) of a recognised stock exchange(s) and is not a spot delivery contract would be illegal****." (****Emphasis Supplied****)*

67. The purpose of the spot delivery contract is that any transaction which does not take place on stock exchange platform, must conclude in one day and result in actual delivery/transfer of shares and the payment of price whether on the same day as the date of the contract on the next day. As discussed in the preceding paragraphs, the

aforementioned transactions were off-market transactions, therefore, they were in the nature of spot delivery contracts. Hence, these transactions should have concluded on the same day or the next day. Since, the said transactions were not found to be in compliance with 'spot delivery contracts' in terms of 2(i) of the SCRA, it is established that the Noticees have violated the provisions of Section 16 of SCRA read with SEBI Notification LAD-NRO/GN/2013-14/26/6667 dated October 03, 2013, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA.

68. Now I proceed to deal with the allegation of non-compliance of summons by Noticee No. 4. In this regard, it is noted that Noticee No. 4 was summoned to furnish documents/information as sought vide summons dated August 29, 2022 and reminder summons dated September 26, 2022. Summons dated August 29, 2022 was duly served on Noticee No. 4, however, Noticee No. 4 failed to comply with the same. Further, both the summons were served on Noticee no. 4 through email. However, Noticee No. 4 did not respond to them.

69. It is, therefore, observed that the Noticee No. 4 was given adequate opportunity by the Investigating Authority (IA) to comply with the summons. Under the provision of Section 11(C)(3) of the SEBI, an IA can direct any person associated with securities market to furnish information/documents, if furnishing of such information is necessary for the purposes of the investigation. Therefore, it is the duty, responsibility and obligation of every person from whom information is sought to fully co-operate with IA and promptly produce all documents, records, information, etc., to the IA. If persons are allowed to flout the summons issued to them during the course of the investigation, SEBI, as the watchdog of the securities market, will not be able to discharge its statutory obligations in protecting the interests of the investors and safeguarding the integrity of the securities market. Thus, as Noticee No. 4 did not respond to the summons and did not appear before the IA though repeated opportunities were given, the same thwarted the attempts of SEBI to effectively gather vital evidence for the timely conclusion of the investigation proceedings.

70. It is pertinent to mention that with respect the non compliance of summons by the entities, Hon'ble Supreme Court in the matter of DKG Buildcon v the Adjudicating & Enquiry Officer, SEBI[5] has observed that:

> "*As has been rightly observed by the SAT in its Order dated 07.01.2009, non-furnishing of information by the appellants in compliance of summons cannot be viewed lightly, particularly, when the appellants were involved in offences of such a grave nature being detrimental to the interest of genuine investors and to the smooth and secure functioning of the securities market…The appellants were bound to fully co-operate with the Investigating Authority and promptly produce all documents, records and information as were required for the investigation from time-to-time. In failing to do so, the appellants clearly obstructed and hindered the investigation*."

71. In the light of the above, the violation of Section 11C(3) by Noticee No. 4 is established.

ISSUE (III)- Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 23h of the SCRA and Section 15 A(a) of the SEBI Act?

72. As it has been established that Noticees have violated the provisions of law as alleged in the SCN, all the Noticees are liable for payment of a monetary penalty in terms of Section 23H of the SCRA and Noticee No. 4 under Section 15A(a) of SEBI Act as well.

73. In this context, I would also like to refer to the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} wherein Hon'ble Supreme Court of India held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts*

[5] MANU/SC/1166/2022

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.''

74. The text of Section 15A(a) of the SEBI Act and Section 23H of SCRA is reproduced below:

"SEBI Act

15A. Penalty for failure to furnish information, return, etc.

If any person, who is required under this Act or any rules or regulations made thereunder,-

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

SCRA, 1956

23 H. Penalty for contravention where no separate penalty has been provided.

Whoever fails to comply with any provision of this Act, the rules or articles or byelaws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."

ISSUE (IV): If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act and Section 23J of the SCRA?

75. While determining the quantum of penalty under Section 15A(a) of SEBI Act and Section 23H of the SCRA it is important to consider the factors stipulated in Section 15J of SEBI Act and Section 23J of the SCRA, which reads as under:

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

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely :—

(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.

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

23J. While adjudging the quantum of penalty under section 12A or section 23-I, 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."

76. The material available on record has neither quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees nor the amount of loss, if any, caused to an investor/clients as a result of the default of the Noticees. As regard the

repetitive nature of the default, there is nothing on record to show that the nature of the default by the Noticees is repetitive.

77. In the instant case, it is an undisputed fact that the Noticees were parties to the off-market transactions that took place in the shares of the company during the IP. Further Noticee No. 4 hampered the investigation by not responding the summonses.

78. As per the relevant provisions of the SCRA, every contract in securities should be executed through members of recognised stock exchange (s) or through or with such member(s) and the only exception thereto is spot delivery contract(s). As discussed in the preceding paragraphs, the transactions were off-market transactions. Therefore, they were in the nature of spot delivery contracts as defined under Section 2(i) of the SCRA, i.e., actual delivery/ transfer of shares, and the payment should be on the same day as the date of the contract or the next day. However, as discussed in the preceding paragraphs, in the instant case, payment for these transactions were either not paid/received at all or not paid/received within the stipulated time period in compliance with the provisions of Section 2(i) of the SCRA.

79. The provisions of SCRA's are meant to prevent undesirable transactions from happening in the securities market. Consequently, adherence to the SCRA's provisions is essential to the market's seamless operation and the preservation of market integrity. Therefore, the act of the Noticees needs to be dealt with sternly.

80. Further, Noticee No. 4 did not comply with the summons issued to him despite reminder. By not replying to the summons, Noticee No. 4 has thwarted the investigation in the matter, and therefore, the said action/non action is required to be dealt with accordingly.

ORDER

81. Having considered all the facts and circumstances of the case, the material available on record including submissions of the Noticees as well as the factors mentioned in section 15J of SEBI Act and Section 23J of SCRA 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 1995, and Section 23I of SCRA read with Rule 5 of the SCR Adjudication Rules, 2005, I hereby impose following penalty the Noticees. I am of the view that the said penalty is commensurate with the violations committed by Noticees.

Noticee No.	Noticee	Penal Provision	Penalty Amount
1	Kepler Information Systems Pvt. Ltd.	Section 23 H of SCRA	Rs. 3,00,000 (Rupees Three Lakh Only)
2	Kalpana Komati	Section 23 H of SCRA	Rs. 3,00,000 (Rupees Three Lakh Only)
3.	Trivikram Kolukuluri	Section 23 H of SCRA	Rs. 3,00,000 (Rupees Three Lakh Only)
4.	Silamkoti Abilash	Section 23 H of SCRA	Rs. 2,00,000 (Rupees Two Lakh Only)
		Section 15A(a) of SEBI Act	Rs. 2,00,000 (Rupees Two Lakh Only)

82. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

83. In the event of failure to pay the said amount of penalty by Noticees within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticees under

Section 28A of the SEBI Act and Section 23JB of SCRA, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

84. In terms of the provisions of Rule 6 of the Adjudication Rules and Rule 6 of SCR Adjudication Rules, copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date : November 21, 2024
Place : Mumbai

Asha Shetty
Adjudicating Officer