BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. JJ/AM/AO-36-41/2014

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:

S. No.	Name	PAN	Order Number
1	Shri Dharmendra Kothari	AFGPK6680M	JJ/AM/AO-36/2014
2	Late Shri Pradeep Kumar Kothari	AFOPK1349D	JJ/AM/AO-37/2014
3	Shri Rajesh Kothari	AFGPK6678B	JJ/AM/AO-38/2014
4	Shri Hemant Kothari	AFOPK6638P	JJ/AM/AO-39/2014
5	Smt. Ichraj Devi Kothari	AKYPK8836C	JJ/AM/AO-40/2014
6	Smt. Sunita Kothari	AFNPK8049P	JJ/AM/AO-41/2014

In the matter of:

Kwality Credit & Leasing Limited

BACKGROUND

1. Securities and Exchange Board of India **(SEBI)** received large number of alerts since 01/09/2010 on high off-market transfers in the shares of Kwality Credit & Leasing Limited **(KCLL)**. It was observed that between 15/09/2010 and 21/09/2010, a total of 23,25,821 shares (around 66.45% of equity capital of KCLL) were transferred in off-market deals to a group of entities who had demat accounts with

depository participant, Guiness Securities Limited **(GSL)**. Subsequently, SEBI conducted detailed investigation in the matter.

2. The quarterly shareholding patterns of KCLL were as under:

Category	Quarter ended June 2010		Quarter ended September 2010	
	Shares	%	Shares	%
Promoter & Promoter Group	129,350	3.7	129,350	3.7
Public	3370,650	96.3	3370,650	96.3
Grand Total	3500,000	100.0	3500,000	100.0

3. It was observed that KCLL shares were transferred in off market from demat accounts in Central Depository Services Ltd **(CDSL)** to demat accounts in National Securities Depository Ltd. **(NSDL)**. Again some shares were also transferred from demat accounts in NSDL to other demat accounts in NSDL. The details of final individual recipients of KCLL Shares were as follows :

Date	**Recipients**	**Shares received**	**Cumulative Total**	**Total**	**% of total capital**
18/09/2010	RAJESH KOTHARI	41156			
	RAJESH KOTHARI	7582	48738	48738	1.39%
17/09/2010	DHARMENDRA KOTHARI	50000	50000		
18/09/2010	DHARMENDRA KOTHARI	50000	100000	125876	3.59%
21/09/2010	DHARMENDRA KOTHARI	25876	125876		
18/09/2010	ALKA RUNTHALA	50000			
	ALKA RUNTHALA	50000	100000	100000	2.85%
17/09/2010	DILIP PATWARI	50000	50000		
18/09/2010	DILIP PATWARI	50000	100000		
21/09/2010	DILIP PATWARI	44699	144699	144699	4.13%
17/09/2010	SUNITA KOTHARI	50000	50000		
18/09/2010	SUNITA KOTHARI	59103	109103		
21/09/2010	SUNITA KOTHARI	50000	159103	159103	4.54%
17/09/2010	PRADEEP KUMAR KOTHARI	50000	50000		
18/09/2010	PRADEEP KUMAR KOTHARI	50000	150000		
	PRADEEP KUMAR KOTHARI	50000		150000	4.28%
17/09/2010	ICHRAJ DEVI KOTHARI	50000	50000	100000	2.85%
21/09/2010	ICHRAJ DEVI KOTHARI	50000	100000		

18/09/2010	HEMANT KOTHARI	50000	50000		2.85%
23/09/2010	HEMANT KOTHARI	50000	100000	100000	
			Total	**928416**	**26.52%**

4. It was observed that Dipak Rudra, Dharmendra Kothari, Sunita Kothari, Kamal Kumar Kothari, Kalyan Mukherjee, Pradeep Kumar Sarkar and Prasanta Ray were the directors of GSL during the year 2010-11. The group companies of GSL were (a) Guiness Commodities Pvt. Ltd. (b) Guiness Portfolio Management Services Pvt. Ltd. (c) Guiness Insurance Broking Services Pvt. Ltd. (d) Guiness Finance & Leasing Company Pvt. Ltd. (e) Guiness Merchant Banking Services Pvt. Ltd. and (f) Guiness 16anna.com Marketing Pvt. Ltd. The details of promoters and directors of the aforesaid group companies were as follows:

Group Company	**Promoters**	**Directors**
Guiness Commodities Pvt. Ltd	Kamal Kumar Kothari	Sunita Kothari
	Sunita Kothari	Kamal Kumar Kothari
	Icharaj Devi Kothari	
Guiness Portfolio Management Services Pvt. Ltd.	Guiness Commodities Pvt. Ltd	Kamal Kumar Kothari
	Icharaj Devi Kothari	Dipankar Ganguly
	Kamal Kumar Kothari	Jyoti Prakash
		Bodhisatwa Chanda
Guiness Insurance Broking Services Pvt. Ltd	Dharmendra Kothari	Kamal Kumar Kothari
	Icharaj Devi Kothari	Ashok Kumar Runthala
	Dharmendra Kothari (HUF)	Asish Kumar Ray
		Utpal Bhattacharya
Guiness Finance & Leasing Company Pvt. Ltd	Kusum Devi Kothari	Sunita Kothari
	Anand Kothari	Pradeep Kumar Kothari
	Akshay Kothari	Makhan Lal Deora
	Abhijeet Kothari	Dhanpat Raj Kothari
	Aman Mohan Kothari	
Guiness Merchant Banking Services Pvt. Ltd.	Kamal Kumar Kothari	Kamal Kumar Kothari
	Apurva Commodities Pvt. Ltd.	Babulal Nolkha
	Kalpa Mercantile Pvt. Ltd.	Deepak Parakh
	Miatru Agro Marketing Pvt. Ltd.	
	Paramarth Agro Marketing Pvt Ltd	
	Pawantar Agro Agencies Pvt. Ltd.	
	Sangam Agro Agencies Pvt. Ltd.	
Guiness 16anna.com Marketing Pvt. Ltd	Dharmendra Kothari	Dharmendra Kothari
	Babulal Nolkha	Babulal Nolkha

5. It was observed that Dharmendra Kothari, Pradeep Kumar Kothari, Rajesh Kothari, Hemant Kothari, Ichraj Devi Kothari, Sunita Kothari, Alka Runthala and Dilip Patwari were the 8 individual recipients of KCLL shares. During investigation, Rajesh Kothari, Hemant Kothari and Alka Runthala had stated to have received the shares by funding loans. However, they did not provide any documentary proof for the loan arrangements. During investigation, it was also observed that rest of them had acquired the shares at a price of Rs.5 per share.

6. It was observed that Dharmendra Kothari [**Noticee 1)**], Pradeep Kumar Kothari [**Noticee 2)**], Rajesh Kothari [**Noticee 3)**] and Hemant Kothari [**Noticee 4)**] were brothers, Ichraj Devi Kothari [**Noticee 5)**] is their mother and Sunita Kothari [**Noticee 6)**] is sister-in-law. Dharmendra Kothari, Pradeep Kumar Kothari, Rajesh Kothari, Hemant Kothari, Ichraj Devi Kothari and Sunita Kothari (hereinafter collectively referred to as **the Acquirers/Noticees**) are relatives and they had together acquired 6,83,717 shares constituting approximately 19.53% of the paid-up capital of KCLL.

7. It was alleged that the inter-se relationship in the Kothari family together with their acquisition of shares of KCLL shares during the same period was with a common object and intent to acquire substantial shareholding of KCLL. It was also alleged that these six (6) persons are deemed to be persons acting in concert **(PAC)** as per Regulation 2 (e) (2) (iii) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 **(SAST Regulations)**. It was further alleged that the acquirers acquired more than 15% of shares of KCLL in violation of Regulation 10 of SAST Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

8. Shri Piyoosh Gupta was appointed as the Adjudicating Officer vide order dated May 08, 2013 and the said appointment was conveyed vide proceedings of the Whole Time Member dated June 20, 2013 to inquire and adjudge under Section 15H of the SEBI Act, 1992 alleged violations of provisions of Regulation 10 of SAST Regulations read with Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 committed by the Acquirers/Noticees. Pursuant to the transfer of Shri Piyoosh Gupta, the undersigned was appointed as Adjudicating Officer vide Order dated November 08, 2013.

SHOW CAUSE NOTICE, HEARING & REPLY

9. Show Cause Notices **(SCNs)**, dated August 06, 2013 were issued to each of the Noticees in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 **(Adjudication Rules)** calling upon them to show cause why an inquiry should not be held against them under Rule 4(3) of the Adjudication Rules for the alleged violations.

10. The SCNs were duly delivered to the Noticees by Speed Post. It is observed that vide letter dated August 18, 2013, Noticee 1) denied the allegations leveled against him in the SCN and sought extension of 15 days time to submit point wise reply. It is observed that vide letter dated nil (received by SEBI on August 26, 2013) Noticee 2) refuted the allegations and sought two weeks time to submit reply. It is observed that vide letter dated August 20, 2013, Noticee 3) denied the alleged

violations mentioned in the SCN and sought time till September 05, 2013 for sending detailed reply. It is observed that vide letter dated August 21, 2013, Noticee 4) denied the alleged violations stated in the SCN and sought 30 days time for submitting an elaborate reply. It is observed that vide letter dated August 20, 2013, Noticee 5) sought 20-25 days time for sending detailed reply. It is observed that vide letter dated August 21, 2013, Noticee 6) denied the allegations leveled against her in the SCN and sought a month's time for submitting detailed reply.

11. Vide Notices dated September 12, 2013 each of the Noticees were asked to submit their reply, if any, on or before September 23, 2013 and they were also granted an opportunity of personal hearing on September 23, 2013 at Eastern Regional Office of SEBI in Kolkata. The aforesaid Notices dated September 12, 2013 were duly delivered to Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) by Speed Post. However, the Noticees neither appeared for personal hearing nor did they make any written submissions. Noticee 1) & Noticee 3) vide their letters dated September 19, 2013 and Noticee 2), Noticee 4) and Noticee 5) vide their letters dated September 20, 2013 and Noticee 6) vide her letter dated September 21, 2013 sought adjournment / extension of hearing. Considering their requests, vide Notices dated September 24, 2013, the Noticees were given another opportunity of hearing on September 30, 2013. The said Notices dated September 24, 2013 were duly delivered by Speed Post to each of the Noticees. However, the Noticees neither appeared for personal hearing nor did they make any written submissions.

12. Subsequent to the appointment of the undersigned as Adjudicating Officer, vide Notices dated January 13, 2014 the Noticees were given a final opportunity of hearing on January 24, 2014. On the scheduled date of personal hearing, i.e., on January 24, 2014 Shri Rajiv Gandhi appeared for personal hearing and submitted that he was appearing on behalf of Noticee 1), Noticee 3), Noticee 4), Noticee 5) and Noticee 6). However, from the letter of authority submitted by Shri Rajiv Gandhi, it was observed that the letter of authority had only the signature of Noticee 4) who had authorised Shri Rajiv Gandhi to appear for all Noticees. On being pointed out the same, Shri Rajiv Gandhi stated that he will be bringing original letters of authority for each of the Noticees and requested for a continuance of the hearing till January 27, 2014. Acceding to the request of Shri Rajiv Gandhi, the undersigned scheduled the next date of hearing on January 27, 2014.

13. On January 27, 2014 Shri Rajiv Gandhi and Shri Sarthak Vijlani appeared as Authorised Representatives **(AR)** on behalf of Noticee 1), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) and made submissions. AR submitted a letter dated January 22, 2014 vide which it was informed that Shri Pradeep Kumar Kothari {Noticee 2)} had expired on December 07, 2013 and the said letter also enclosed a copy of Death Certificate issued by the Kolkata Municipal Corporation.

ISSUES FOR CONSIDERATION

14. After perusal of the material available on record, I have the following issues for consideration, viz.,

    A. Whether Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) have violated provisions of Regulation 10 of SAST Regulations?

B. Whether Noticee 1), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) are liable for monetary penalty under Section 15H of the SEBI Act, 1992?

C. What quantum of monetary penalty should be imposed Noticee 1), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

15. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) have violated provisions of Regulation 10 of SAST Regulations?

16. The provisions of Regulation 10 of SAST Regulations read as under:

> ***Acquisition of fifteen per cent or more of the shares or voting rights of any company***
>
> ***10:*** *No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.*

17. I note that Regulation 10 of SAST Regulations is quite clear in its import and *inter-alia* prohibits an acquirer acquiring shares which (taken together with shares already held by him or by persons acting in concert with him) would entitle him to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a

public announcement to acquire shares of such company in accordance with the regulations.

18. As already noted, Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) are relatives. I also note that Noticee 1) and Noticee 6) were directors of GSL and Noticee 2) and Noticee 6) were directors of Guiness Finance & Leasing Company Pvt. Ltd., which is a subsidiary of GSL. From the demat statements of Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5) and Noticee 6), it is noted that the Acquirers had together acquired 6,83,717 shares constituting approximately 19.53% of the paid-up capital of KCLL details of which are as follows:

Date	**Recipients**	**Shares received**	Cumulative Total	**Total**	**% of total capital**
18/09/2010	RAJESH KOTHARI	41156			
	RAJESH KOTHARI	7582	48,738	48,738	1.39%
17/09/2010	DHARMENDRA KOTHARI	50000	50000		
18/09/2010	DHARMENDRA KOTHARI	50000	100000	1,25,876	3.59%
21/09/2010	DHARMENDRA KOTHARI	25876	125876		
17/09/2010	SUNITA KOTHARI	50000	50000		
18/09/2010	SUNITA KOTHARI	59103	109103		
21/09/2010	SUNITA KOTHARI	50000	159103	1,59,103	4.54%
17/09/2010	PRADEEP KUMAR KOTHARI	50000	50000		
18/09/2010	PRADEEP KUMAR KOTHARI	50000	150000		
	PRADEEP KUMAR KOTHARI	50000		1,50,000	4.28%
17/09/2010	ICHRAJ DEVI KOTHARI	50000	50000		
21/09/2010	ICHRAJ DEVI KOTHARI	50000	100000	1,00,000	2.85%
18/09/2010	HEMANT KOTHARI	50000	50000		2.85%
23/09/2010	HEMANT KOTHARI	50000	100000	1,00,000	
			Total	**6,83,717**	**19.53%**

19. From the above table, I note that the Acquirers had acquired more than 15% of shares of the Company by September 21, 2010 and by September 23, 2010 the Acquirers had together acquired 6,83,717 shares constituting approximately 19.53% of the paid-up capital of

KCLL. Hence, as per the provisions of Regulation 10 of SAST Regulations, Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) were under obligation to make a public announcement to acquire shares of KCLL in accordance with the provisions of SAST Regulations before exceeding the threshold limit as specified in Regulation 10 of SAST Regulations. However, no such public announcement had been made by Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5) and Noticee 6).

20. I note that Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) were members of the same family. Further, Noticee 1), Noticee 2), Noticee 3), Noticee 5) and Noticee 6) shared the same address. I also note that within a span of just seven days, i.e., from September 17, 2010 to September 23, 2010, the Acquirers acquired 6,83,717 shares constituting approximately 19.53% of the paid-up capital of KCLL. Therefore, I find that Noticee 1), Noticee 2), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) were persons acting in concert who for a common objective of acquiring shares, acquired more than 15% of shares of KCLL without making a public announcement to acquire shares of KCLL in accordance with the SAST Regulations. Further, I note that during the course of personal hearing held on January 27, 2014, the AR accepted the violations alleged in the SCN and *inter alia* stated that a Merchant Banker (BCB Brokerage Pvt. Ltd.) had been appointed as manager to open offer to comply with the SAST Regulations.

21. I note that vide letter dated January 22, 2014, Noticee 4) submitted that Noticee 2) had expired on December 07, 2013 and also enclosed a copy of the death certificate dated December 08, 2013 issued by the

Kolkata Municipal Corporation. Hence, the proceedings in respect of Noticee 2) stand abated.

22. In view of the aforesaid discussions, I hold that Noticee 1), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) have violated the provisions of Regulation 10 of SAST Regulations.

ISSUE 2: Whether Noticee 1), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) are liable for monetary penalty under Section 15H of the SEBI Act, 1992?

23. Noticee 1), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) had knowingly acquired a substantial percentage of shareholding of KCLL and did not make a public announcement to acquire shares of KCLL in accordance with SAST Regulations. I am therefore of the opinion that Noticee 1), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) are liable for monetary penalty.

24. The provisions of Section 15H of the SEBI Act, 1992 read as under:

<u>Penalty for non-disclosure of acquisition of shares and takeovers:</u>

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

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

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

(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv)make payment of consideration to the shareholders who sold their shares pursuant to letter of offer.

he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

25. In the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)*, the Hon'ble Supreme Court of India has held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant*".

26. Therefore, I find that Noticee 1), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) are liable for monetary penalty under Section 15H of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on Noticee 1), Noticee 3), Noticee 4), Noticee 5) and Noticee 6) taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

27. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992, which are:

> ***Factors to be taken into account by the adjudicating officer***
> ***(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.*

28. It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. There is no material on record which dwells on the extent of specific gains made by the

Noticees. Further it is also not possible to ascertain the loss to the investors in monetary terms. However, by not complying with the regulatory obligation of making the public announcement, the Noticees had deprived the shareholders of the Company the statutory right to exit through the open offer mechanism. There is no material on record to indicate that such default was repetitive.

29. In the forgoing paragraphs it is now established that Dharmendra Kothari [Noticee 1)], Rajesh Kothari [Noticee 3)], Hemant Kothari [Noticee 4)], Ichraj Devi Kothari [Noticee 5)] and Sunita Kothari [Noticee 6)] failed to make necessary public announcement to acquire the shares of the Company in accordance with SAST Regulations. Considering the facts and circumstances of the case and the violation committed by the Acquirers I find that imposing a penalty of ₹ 40,00,000/- (Rupees Forty Lakhs only) on Dharmendra Kothari, Rajesh Kothari, Hemant Kothari, Ichraj Devi Kothari and Sunita Kothari would be commensurate with the violations committed by them.

ORDER

30. In terms of the provisions of the SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 40,00,000/- (Rupees Forty Lakhs only) under Section 15H of SEBI Act, 1992 on Dharmendra Kothari, Rajesh Kothari, Hemant Kothari, Ichraj Devi Kothari and Sunita Kothari for violation of Regulation 10 of SAST Regulations read with Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Dharmendra Kothari, Rajesh Kothari, Hemant Kothari, Ichraj Devi Kothari and Sunita Kothari shall be jointly and severally liable to pay the said monetary

penalty. Further, I conclude that the adjudication proceedings in respect of Late Shri Pradeep Kumar Kothari stand abated.

31. The penalty shall be paid by way of demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this Order. The said demand draft shall be forwarded to the Regional Manager, Eastern Regional Office, Securities and Exchange Board of India, L&T Chambers, 3rd Floor, 16 Camac Street, Kolkata – 700017.

32. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Dharmendra Kothari, Rajesh Kothari, Hemant Kothari, Ichraj Devi Kothari and Sunita Kothari and also to Securities and Exchange Board of India.

Date: March 25, 2014 **Jayanta Jash**
Place: Mumbai **Adjudicating Officer**