BEFORE THE ADJUDICATING OFFICER SECURITIES AND EXCHANGE BOARD OF INDIA [ADJUDICATION ORDER NO. EAD-9/VKV/NK/2020-21/ 9406]

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

In respect of:
Ms. Kalavati Kanakia
PAN – AAHPK3948A

In the matter of KBS India Limited

Facts of the Case:

1. Securities and Exchange Board of India ("SEBI") pursuant to the periodic examination of DWBIS alerts observed a non-disclosure based alert was generated by the system in the scrip of KBS India Limited ('**Target Company/TC/KBS'**), a company having its shares listed on the Bombay Stock Exchange Limited (hereinafter referred to as '**BSE**'), which mentioned about increase in shareholding by Ms. Kalavati Kanakia (hereinafter referred to as "**Noticee"** or by her individual name) part of the public shareholders in the target company from 0.16% to 5.32% shares vide transaction dated December 15,2016.

2. Since the holding of the Noticee crossed 5% of share capital of the TC, the Noticee was required to make the necessary disclosures as prescribed under the SAST Regulations within two working days, i.e. by December 19, 2016 (December 17, 2016 and December 18, 2016 being Saturday and Sunday). However, it was observed that the Noticee had failed to make the said disclosures. BSE vide its communication dated December 03, 2020 has confirmed that desired disclosure by Noticee was not received by it. Hence it was alleged that Noticee had not made the relevant disclosures and hence violated Regulation 29(1) r/w regulation 29(3) of SAST Regulations.

Appointment of Adjudicating Officer

3. SEBI had initiated adjudication proceedings against Ms. Kalavati Kanakia and undersigned was appointed as Adjudicating Officer vide order dated July 27, 2020

under Section 15 I of SEBI Act read with Rule 5 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter referred as **'AO Rules'**) and under the provisions of section 15A (b) of the SEBI Act for the alleged violation of Regulations 29(1) read with 29(3) of SAST Regulations by Noticee.

Show Cause Notice and Reply

4. Based on the findings, Show Cause Notice dated September 14, 2020 ("SCN") was issued to the Noticee. SCN was duly delivered at the respective address and email ID of the Noticee.

5. Noticee in her reply dated October 6, 2020 has *inter-alia* submitted the following:

a. *Needless to say I have not taken any undue advantage by omission to file. Further, in the interim there is no allegation of any disproportionate gain or unfair advantage attributed to me. I most humbly submit that there was no intention to suppress any material information from the share holders, investors or the public. Since that fact is deemed settled, as a corollary, the question of loss caused to an investor or group of investors as a result of the default cannot rise. It may be further appreciated that consequently, it may be right and just to conclude that there has been no loss to any investor. This fact removes all doubts that there was no defiance of law in the compliance.*

b. *It is further submitted that alleged lapse was totally inadvertent and non repetitive in nature and further there was a genuine effort to disclose no sooner the fact of non disclosure was bought to my notice.*

c. *I most humbly submit that at the relevant time neither my late husband nor I was aware of nor advised of the requirement to make requisite disclosure under Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations, 2011 within two working days of the acquisition of shares on 15.12.2016. It is on record that I was holding was holding 13, 680 shares (0.16%) of KBS in the public category and by virtue of off market transaction dated 15.12.2016 I had further acquired 439 ,598 shares (5.16%) of KBS, thus increasing my shareholding in KBS to 5.32% from .0.16%.*

d. *It is also on record that I had communicated to SEBI that I h a d made the required disclosure to BSE on 04.12.2019 pursuant to SEBI emails dated 30.11.2019, 05.12.2019 and 13.12.2019 seeking clarification from me. I state that that it was only on receiving communication from your good office in this regard did it dawn upon me*

that I was required to make disclosure under under Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations, 2011.

e. *It is on record that the disclosure was to be made by me by 19.12.2016 as per confirmation/evidence provided by me, however, the disclosure was made on 04.12.2019 resulting in a delay of 1079 days*

f. *I humbly state that I had immediately on and without any delay complied with the requisitions of SEBI and thus became compliant with the regulatory directions and the same may not be deemed in defiance or disregard of law.*

g. *It is humbly submitted that it was a venial technical lapse and that there was no intent to not file. I therefore most humbly pray that the violation against me, if established, be viewed leniently. It is therefore pleaded that at the most the alleged lapse may be deemed a mere technicality and may be at the most considered as a procedural lapse.*

h. *I most humbly pray that no adverse inference may be drawn against me and the said technical lapse be viewed leniently since the same was unintentional and inadvertent.*

i. *The said delay occurred on account of lack of knowledge for filing the said disclosure. I did not have trained personnel to look after the compliance matters as per provisions of law.*

j. *It is submitted that there was a delay in complying with the disclosures rather than not filing them at all. This fact establishes that I did not have any malafide or dishonest intention. It is submitted that non compliance and delay in compliance may be viewed differently as the latter is not in defiance of law and as in the present case.*

k. *It is submitted that the intent was not to suppress any information. It is submitted that the lapse may be not be viewed seriously as it has not impaired the interest of any investor. The same may therefore, not be considered as violation of provision of Regulation. It was minor irregularity and hence a lenient view may be taken and the lapse be condoned.*

l. *I crave leave to rely upon the judgment of* ***Hon'ble Bombay High Court in SEBI Vs. Cabot International Capital Corporation, 2004****, wherein it was held as under: Para 25 (G): "Though looking to the provisions of the statute, the delinquency of the defaulter may itself expose him to the penalty provision yet despite, that in the*

statute, minimum penalty is prescribed, the authority may refuse to impose penalty for justifiable reasons like the default occurred due to the bonafide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach etc."

Para 26: Now, the question, of the penalty, by the Adjudicating Authority, in the facts and circumstances of the case, was warranted or not. We find that the allotment in question was undoubtedly covered under the exemption provided in regulation 3(1). There could not have been insistence by the Appellants-SEBI to comply with the requirements of regulation 3(4). It is also clear that when an acquisition is covered under regulation 3 the acquirer is required to report to the Board under the regulation 3(4) within the specified time, as referred above. In view of this undisputed position, merely because there was no Report filed, that itself cannot be read as serious defect or non-compliances of the said provisions. The Appellate Authority, after considering the material on record, including the events, referred in the pleadings, found that the respondents-company had no intention to suppress any material information from the appellants or the share holders.

Hearing

6. In order to comply with the principles of natural justice, a personal hearing and hearing through Webex, in light of the ongoing pandemic was granted to the Noticee on October 16, 2020. Hearing notice was delivered to the Noticee via digitally signed email. The Authorised Representative of the Noticee appeared for hearing on October 16, 2020 and reiterated the submissions made in the letter dated October 06, 2020 by the Noticee.

Consideration of Issues

7. I have carefully perused the charge levelled against Noticee in the SCN, Reply of the Noticee and all the documents available on record. In the instant matter, the following issues arise for consideration and determination in respect of

Issue – I:-. Whether Noticee has violated Regulation 29(1) read with 29(3) of SAST Regulations.

Issue – II:- Does the violation, if any, on the part of Noticee attract monetary penalty under Section 15 A (b) of the Act?

Issue – III:- If so, what would be the quantum of monetary penalty that can be imposed on noticees taking into consideration the factors mentioned in Section 15J of the Act?

Findings

8. Before proceeding further, I would like to refer to the relevant provisions of the SAST regulations which read as under:

Disclosure of acquisition and disposal.

29(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified

29(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—*

(a) *every stock exchange where the shares of the target company are listed; and*

(b) *the target company at its registered office.*

Issue – I:- Whether Noticee has violated Regulation 29(1) read with 29(3) of SAST Regulations?

9. It is observed from the shareholding pattern available at BSE website that, the equity share capital of the company for the quarter ended September 2016 was 5,26,500, out of which the Noticee was holding 13, 680 shares (0.16%) of the Target Company in public category.

10. It is further observed that, the Noticee by virtue of off market transaction dated December 15, 2016, acquired 439,598(5.16%) equity shares of the Target Company. Thus, with the aforesaid acquisition of shares by the Noticee, the shareholding of the Noticee increased from 0.16% to 5.32% in the Target Company. The same is shown in the Table below and available on BSE Website:

Date of acquisition	Shareholding before Acquisition	No. of shares Acquired	Shareholding after Acquisition

December 15, 2016	0.16%	439,598(5.16%)	5.32%

11. Thus, it is clear that as a result of aforesaid acquisition consequently, the Noticee was obligated to make disclosure to BSE and the Target Company as stipulated under regulation 29(1) r/w regulation 29(3) of SAST Regulations 2011.However, it was observed that no such disclosures were made by the Noticee by December 19, 2016.

12. It is observed that, BSE vide e-mail dated December 03, 2020 informed SEBI that, exchange was not in receipt of any disclosure from the Noticee w.r.t the aforesaid acquisition under regulation 29(1) r/w regulation 29(3) of SAST Regulations 2011.

13. It is also observed that SEBI, vide email dated November 30, 2019 sought clarification from the Target Company with respect to the abovementioned non-disclosure. However, no reply has been received.

14. Thereafter, SEBI, vide e-mails dated November 30, 2019, December 05, 2019 and December 13, 2019 sought clarification from the Noticee with respect to the abovementioned alleged non-disclosure. Noticee vide email dated December 04, 2019 submitted that, she made the required disclosure to BSE on December 04, 2019 and provided the copy of email communication sent to BSE. The same disclosure is being reflected on the BSE website. On seeking further clarifications, Noticee vide emails dated December 10, 2019 and December 15, 2019 submitted that, though the transactions were made on the earlier date, the shares were transferred to demat account on December 15, 2016 only. The same is also mentioned in the statement dated November 22, 2019 as provided by Central Depository Services Limited (**CDSL**). Also, the modified shareholding is getting reflected on the BSE website for the quarter ending December 2016. Hence, effective date of transaction is December 15, 2016

15. It is noted that, disclosure was to be made by Noticee latest by December 19, 2016 and as per confirmation/evidence provided by the Noticee, the disclosure was made on December 4, 2019 resulting in a delay of 1079 days.

Issue – II:- Does the violation, if any, on the part of noticee attract monetary penalty under Section 15 A (b) of the Act?

16. I have carefully perused the allegations levelled in the SCN and the reply submitted by the Noticee vide email and letter dated October 6, 2020. I find that, the Noticee

was obligated to make disclosure to BSE and the Target Company as stipulated under regulation 29(1) r/w regulation 29(3) of SAST Regulations 2011 due to aforesaid acquisition of shares of target company. However, the Noticee failed to make the said disclosures. I find from the submissions made by the Noticee that Noticee has admitted her failure to make the necessary disclosures under the SAST Regulations.

17. As mentioned above, Noticee in her reply has *inter – alia* submitted that, non-disclosure was technical lapse, unintentional, inadvertent and that,there has been no loss to any investor and she has not taken any undue advantage. Further, Noticee, has also quoted the *judgment of* ***Hon'ble Bombay High Court in SEBI Vs. Cabot International Capital Corporation, 2004***

In this context, I note that the Hon'ble Securities Appellate Tribunal in the matter of Komal Nahata Vs. SEBI vide order dated January 27, 2014 has observed that:

"*Argument that no investor has suffered on account of nondisclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations,1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such nondisclosure."*

Further, I also note that in Appeal No. 78 of 2014 in the case of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal vide order dated September 30, 2014 has observed that:

"… Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay".

18. Noticee has accepted that there was a delay on her part and therefore, In view of the above, I conclude that the Noticee, by not making the necessary disclosures upon increase in shareholding in the target company from 0.16% to 5.32% shares, have violated the provisions of Regulation 29(1) read with 29(3) of the SAST Regulations of law which warrants imposition of monetary penalties as prescribed under Section 15A (b) of the SEBI Act, 1992 which reads as under :

Penalty for failure to furnish information, return, etc.

15A*. If any person, who is required under this Act or any rules or regulations made there under-;*
(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

19. The Hon'ble Securities Appellate Tribunal, in Appeal No.66 of 2003 order dated April 15, 2005 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI, has also observed that, "*the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature".*

20. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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…"*.

21. While determining the quantum of penalty under Section 15A(b) of the SEBI Act,1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 which reads as under:-

15J-Factors to be taken into account by the Adjudicating Officer While adjudging quantum of penalty under section 15-I, the Adjudicating Officer shall have due regard to the following factors, namely:-

(a) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

(b) *the amount of loss caused to an investor or group of investors as a result of the default;*

(c) *the repetitive nature of the default.*

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

Issue – III:- If so, what would be the quantum of monetary penalty that can be imposed on noticees taking into consideration the factors mentioned in Section 15J of the Act?

22. I observe that, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. I note that the default of the Noticee is not repetitive in nature. I note that correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision and is not mere technical obligations. Thus, the disclosures requirements prescribed in the provisions in question cannot be termed as non-consequential. I, therefore, conclude that the Noticee, by failing to make the necessary disclosures as required under the SAST Regulation is liable for monetary penalties under the SEBI Act, 1992.

23. Here, it is pertinent to draw reference to **Yogi Sungwon (India) Ltd. v/s SEBI - Appeal No. 36 of 2000, Order dated May 04, 2001**, wherein Hon'ble Securities Appellate Tribunal ("SAT") had observed that,

"……On perusal of section 15I it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that 'he may impose such penalty' is of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. 'The Adjudicating Officer shall have due regard to the factors' stated in the section is a direction and not an option.

It is not incumbent on the part of the Adjudicating Officer, even it is established that the person has failed to comply with the provisions of any of the sections specified in the sub-section (1) of section 15-I, to impose penalty. It is left to the discretion of the Adjudicating Officer, depending on the facts and circumstances of each case….."

In view of the above, I am of the opinion that the case in hand deserves an appropriate penalty as stipulated under section 15A(b) of the SEBI Act, 1992.

ORDER

24. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992

read with Rule 5 of the Adjudication Rules, I hereby impose the following monetary penalty on the Noticee:

Name of the Noticee	Provisions of Law Violated	Penalty Provision	Penalty Amount (in Rs.)
Ms. Kalavati Kanakia	Regulation 29(2) read with 29(3) of the SAST Regulations	Section 15A(b) of the SEBI Act	1,00,000/- (One lakh)

25. Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment facility into Bank account the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI - Penalties Remittable to Government of India
Beneficiary A/c No	31465271959

26. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to “The Division Chief (Enforcement Department 1-DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot no C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052 and also send an email to tad@sebi.gov.in with the following details:

1	Case Name	
2	Name of Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No	
6	Bank Details in which payment is made:	
7	Payment is made for: (like penalties/ disgorgement/ recovery/Settlement amount and legal charges along with order details)	

27. The amount of penalty can also be made by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

28. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

29. In terms of Rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date : October 19, 2020 **Vijayant Kumar Verma**
Place : Mumbai **Adjudicating Officer**