

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

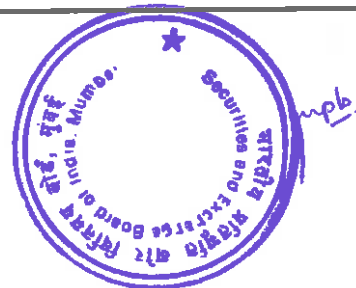
**ORDER**

**Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of M/s Kavita Industries Limited (PAN: AAACJ4907C)**

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**Background of case:**

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) was in receipt of a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “MCA”) vide which MCA has annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA has also annexed the letter of Serious Fraud Investigation Office (hereinafter referred to as “SFIO”) dated May 23, 2017 which contained the data base of shell companies along with their inputs.
2. SEBI as a market regulator is vested with the duty under section 11(1) of the SEBI Act, 1992 (hereinafter referred to as “SEBI Act”) of protecting the interests of the investors in securities and to promote the development of and regulations of securities markets by appropriate measures as deemed fit.
3. SEBI was of the view that companies identified as shell companies by SFIO and MCA, were potentially involved in
  - (a) Misrepresentation including of its financials and its business and possible violation of SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “LODR Regulations”) and/or



- (b) Misusing the books of accounts/funds of the company including facilitation of accommodation entries to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and key management person (KMP)
4. SEBI was also of the view that investors should be alerted on the possible enforcement action by various authorities leading to potentially significant impact on the price of the stock.
5. Therefore, in the interest of investors, SEBI took the pre-emptive interim measures under section 11(1) of SEBI Act, 1992, in respect of listed shell companies including M/s Kavit Industries Limited (hereinafter referred to as “KIL” / “Company”), vide its letter dated August 7, 2017, based on the view stated at para 3 and 4 above. SEBI placed trading restrictions on promoters/directors so that they do not exit the company at the cost of innocent shareholders. In view of the said objective, SEBI vide the said letter dated August 7, 2017 also placed the scrip in the trade to trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them on trading in the scrip. The said measures were initiated by SEBI pending final determination after verification of credentials and fundamentals by the exchanges, including by way of audit and forensic audit if necessary. The measures also envisaged, on the final determination, delisting of companies from the stock exchange, if warranted. By virtue of these measures, trading in the scrip was not suspended but allowed under strict monitoring so that investors could take informed investment decisions till SEBI and Exchanges completed their detailed examination of such companies.
6. Pursuant to the same, BSE vide notice dated August 7, 2017, to all its market participants initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed securities as identified by MCA and communicated by SEBI, with effect from August 8, 2017.



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7. On August 09, 2017, SEBI further advised the Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of the company like company's compliance requirement with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.
8. Aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI and BSE, KIL filed an appeal No. 176 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). The Hon'ble SAT vide order dated August 11, 2017 directed the following:-

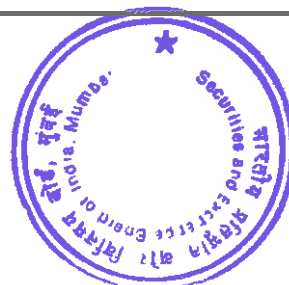
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*In view of the facts set out in the Memorandum of Appeal and other documents tendered at the time of hearing relating to annual turnover of the appellant company for last three years, which even according to SEBI prima facie appear to be correct, we extend the said stay to the case of the appellant company herein and direct the stock exchanges to reverse their decision in respect of the appellant company as expeditiously as possible.*

*Appellant company has already made a representation to SEBI against the impugned communication of SEBI dated 07.08.2017. SEBI is directed to dispose of the said representation in accordance with law.*

*It is made clear that this order shall not come in the way of SEBI as well as the stock exchanges to investigate the case of the appellant company and initiate proceedings if deemed fit....."*

9. The Hon'ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* dated August 10, 2017 held that the measures taken by SEBI vide its letter dated August 07, 2017 was in the



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nature of quasi-judicial order and the same has been passed with out investigation. Without prejudice to the powers enumerated in section 11(1) of SEBI Act, SEBI has been granted power under section 11(4) and 11B of SEBI Act, 1992 to pass order in the interests of investors or securities market by taking any of the measures enumerated therein either pending investigation or inquiry or on completion of such investigation or inquiry. The inquiry under section 11B of the SEBI Act can also be caused to be made by SEBI.

10. Pursuant to the Hon'ble SAT directions, vide letter dated August 09, 2017, the company submitted a representation which included the memo of appeal and the annexed documents filed before SAT in the Appeal No. 176/2017. The main grounds of the appeal was that
- The impugned order is illegal and the same was on incorrect factual and legal basis.
  - The impugned order is in violation of principles of natural justice.
  - The impugned order does not demonstrate the urgency in passing the order.
  - The impugned order was not a speaking order and does not speak about the evidence.
  - Before passing the order, SEBI has not set up its case against the company by issuing a SCN and affording an opportunity of personal hearing.
  - The impugned order is beyond the power of BSE.
  - The decision to pass the impugned order was taken by official who were not authorized.
  - The BSE being a quasi-judicial authority is required to act on its own and based on its own investigation in impartial manner.
  - The impugned order deprives the fundamental right of the company.
11. On the basis of the above main grounds, the Company sought for the relief of setting aside the SEBI communication dated August 7, 2017 as far as the same is applicable to the company and sought for the reversal of directions contained therein and the subsequent communication of BSE.



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12. **Hearing and Reply:** Pursuant to the decision of Hon'ble SAT that the communication of SEBI dated August 7, 2017 is in the nature of quasi-judicial order, the Company and its representatives appeared before SEBI on August 10, 2017 seeking the personal hearing on that date. Since the undersigned was already pre occupied with pre-scheduled hearings on that date, the personal hearing could not be granted on that date. However, SEBI vide communication dated August 10, 2017, granted an opportunity of hearing to KIL on August 14, 2017 i.e. the second working day. Shri J J Bhatt, Advocate, appeared on behalf of KIL and made the oral submission. KIL was advised to submit the following information:

- (a) Details of transaction (including nature of transaction and supporting documents) dated February 10, 2010 where Atreya Petrochem Limited (now known as KavIt Industries Limited) had transferred Rs. 21,58,000 to Shree Ganesh Spinners Limited.
- (b) Declaration from the Company as to whether there were any transaction wherein Mr. Shirish Chandrakant Shah, was directly or indirectly involved during the period of April 1, 2009 to March 31, 2013. Details of all such transactions including the nature of transactions and supporting documents.
- (c) Details of employees on the rolls of the Company, their respective roles, remuneration received, qualifications and experience for the job. Details of Provident Fund contributions made by the Company for the aforesaid employees. For ease of furnishing the information, broad categories of roles: Blue collar, Junior management, Middle management, senior management, may be given with names and corresponding details.

KIL was given following timeline to provide the information:

Financial year	Time line
2009-2010	August 22, 2017
2010-2011	August 21, 2017
2011-2012 and 2012-2013	August 23, 2017



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13. Subsequent to the hearing, SEBI vide letter dated August 16, 2017 sought same information from the Company which were also sought at the time of hearing. However, the additional information was also sought vide the said letter dated August 16, 2017 is as under:-

(a) Declaration from the company that whether there were any other transactions made wherein Mr. Shirish Chandrakant Shah or any of the 16 companies (given in table below) was directly or indirectly involved during the period April 1, 2009 to March 31, 2013. Further, provide details of the all such transactions including nature of transaction and supporting documents.

Sr No.	Name of Scrip
1	Allied computer international Asia Ltd
2	Prraneta industries ltd(Aadhar ventues india ltd)
3	Mahan industries ltd
4	Prabhav industries ltd
5	Empower India
6	IRIS Media ltd
7	GCV Services ltd
8	Sanguine Media Ltd
9	Emporis projects Ltd
10	Avance Technologies Ltd
11	Shree Ganesh Spinners ltd (Yantra natural resources ltd)
12	Venmex drugs ltd
13	Secunderabad Healthcare Ltd.
14	LN Polyster ltd( LN industries ltd)
15	Dhanus Technologies Ltd
16	Visesh Infotechnics Ltd.

14. In response to the queries sought by SEBI at the time of hearing and SEBI vide its letter dated August 16, 2017, the company vide letter dated August 21, 2017 submitted the following information query wise:-



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- a. Reply to query 1: We inform you that we have paid a sum of Rs. 21,58,000 by cheque dated 10.02.2010. The amount was paid towards advance for investment shown under loans and advances in the books of the company. Ledger copy for the same is attached.
- b. Reply to query 2: We hereby declare that KIL had transaction during the period April 1, 2009 to March 31, 2013 only with Shree Ganesh Spinner and Prabhav Industries Ltd.

Prabhav Industries Ltd.: We wish to state that Mr. Jayeshbhai Thakker was the managing director of Prabhav Industries Ltd. during April 1, 2009 to March 31, 2013 as mentioned in your letter. It was therefore a group company. Ledger company of the Prabhav Industries in the books of KIL (formerly known as Atreya Petrochem Ltd.) of the said period is attached.

Shree Ganesh Spinner Ltd. (Yantra Natural Resources Ltd.): The Company has paid Rs. 1,05,00,000 to Shree Ganesh Spinner Ltd by Cheques towards for advance for investments which were shown under loans and advances in the books for year ended as on March 31, 2010. Ledger Copy for the same is attached.

- c. List of 44 employees is attached

15. Since the information furnished by the company was inadequate and did not fully address the queries, vide letter dated August 29, 2017, SEBI gave a further opportunity to the company to furnish full details as follows:

- (a) With respect to transaction with Shree Ganesh Spinners Limited (now known as Yantra Natural Resources Ltd.) of Rs. 21,58,000, you are requested to explain the nature of investment for which loan and advance was given and also, how this investment is linked to the nature of business of the Company. Further, you are requested to provide details of the final utilization of the amount of Rs. 21,58,000 and also the investment in which the Loan and Advance made by the company to Shree Ganesh Spinners Ltd. totaling to Rs. 1,05,00,000 has fructified into. If the Loan and Advance is returned by Shree Ganesh Spinners Ltd, to the Company, the details of the same to be provided.



(b) With respect to the following transactions with Prabhav Industries. Ltd., kindly provide the nature of receipt and how is it linked to the nature of business

- i. Rs. 20,00,000 received on Feb 05, 2011 (Pg. 7 of your reply dated August 21, 2017)
- ii. Rs. 4,50,000 received on March 09, 2011 (Pg. 7 of your reply dated August 21, 2017)

All the information in point 1 & 2 were required to be provided with relevant supporting documents by August 31, 2017.

16. KIL vide letter dated August 30, 2017, requested for extension of one week time to submit reply to SEBI's query. The request of KIL was declined and KIL vide email dated September 1, 2017 was advised to submit its reply by September 2, 2017. KIL vide letter dated September 2, 2017 submitted the following information:

- a. Reply to query 1: *An amount of Rs. 1,05,00,000 was given to M/s. Shree Ganesh Spinner Ltd as a friendly unsecured loan. We wish to make it clear, we are in the business of edible oil, soya (sic) energy, lubricating oil etc. Whereas M/s. Shree Ganesh Spinner Ltd was in the business of mining and general trading. The loan was given at the specific request and friendly guarantee given by some common business friend. The loan stands till date in our books of account. We confirm that we have not received any interest not having claimed any interest as it is friendly loan. We were given to understand, in the year 2010-11, M/s. Shree Ganesh Spinner Ltd has changed the name to Yantra Natural Resources Ltd. The Company did not give any intimation in this regard. So we have continued to show this outstanding receivable amount from M/s. Shree Ganesh Spinners Ltd., this can be verified from the Return filled by us before the Income Tax Department and ROC.*
- b. Reply to Query to 2: *We would like to inform that Prabhav Industries Ltd. was inter Group Company of Kavita Industries Ltd. and managing director was common in both company. We have received both the above amount from Prabhav Industries Ltd for purchase of lubricating oil. KIL had prime business of manufacturing and trading of lubricating oils in whole India and when company received any big*



*order, KIL needs fund for purchase of raw material for lubricating oil. So we had taken loan from Prabhav Industries Ltd. We have taken Rs. 20,00,000 and Rs. 4,50,000 for payment to supplier of lubricating oil.*

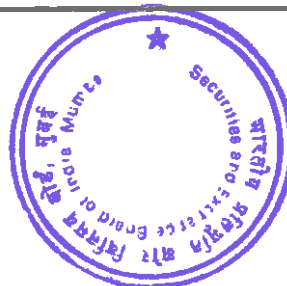
17. Pursuant to the SEBI letter dated August 9, 2017, BSE has submitted its report to SEBI stating that the company has submitted the auditor certificate from M/s. R. Sheetal Samriya & Associates, Chartered Accountant. As per the Auditor Certificate,

- a. The company has filed income tax returns for the last 3 years and as on date there is disputes for six assessment years between AY-1995-96 to 2014-15 aggregating to Rs. 23.67 crs is outstanding, against which appeal has been filed by the company.
- b. The company has complied with companies act requirements up to March 31, 2017.
- c. The company is a going concern.
- d. The Company has complied with key clauses of erstwhile listing agreement/ SEBI (LODR) Regulations, 2015 for last 3 years

18. It is further submitted by BSE that the Auditor has not confirmed about the status with respect to default towards any Loan with any bank /financial institutions. Bank Statements submitted by the company are not certified by company. The information sought by BSE vide email dated August 30, 2017 on this score is yet to be replied by the Company.

19. On verification of all other materials submitted by the Company to BSE, a report of BSE dated August 31, 2017 was submitted to SEBI. However, no specific recommendation was made by BSE.

20. The details of bank statement (Corporation Bank with A/c No.510101000470189) provided by the company are as tabulated below: -



Date	Particulars	Debit	Credit	Balance
04/05/2017	Rtgs A Tejas		1,85,00,000	1,85,08,586
04/05/2017	To CBCA 119	1,85,00,000		8,586
12/05/2017	RTGS Tejas		1,10,40,000	1,10,48,471
12/05/2017	RTGS Naolin Inf		50,00,000	1,60,48,471
15/05/2017	RTGS Naolin Inf		75,00,000	2,35,48,471
15/05/2017	To Content Infra	50,00,000		1,83,48,471
15/05/2017	To Content Infra	1,10,00,000		75,48,471
15/05/2017	To Content Infra	7,50,000		67,98,471
15/05/2017	To CBCA 119 Content Infra	67,98,000		471.00
17/05/2017	NEFT Naolin Infrastructure		40,00,000	40,00,471
18/05/2017	NEFT Naolin Infrastructure		25,00,000	65,00,471
18/05/2017	ZUBER	8,00,000		57,00,471
18/05/2017	RTGS	32,00,000		25,00,413
18/05/2017	CBCA SUNAYANA	25,00,000		413

From the above bank transactions, it is noted that some of the payments have been made by the Company which is in the manufacturing and trading business of oil to infrastructure companies, such as, Content Infra and Naolin Infrastructure. These appears to be accommodation entries as named entities are into infrastructure sector having no direct connection to the business of KIL.

### **Consideration:**

21. On perusal of the materials available on record, the following issues arise for consideration.

- (a) *Whether there is prima facie evidence of misrepresentation including of its financials and/or its business and possible of violation of LODR Regulations by the company.*
- (b) *Whether there is prima facie evidence the company is misusing the books of accounts / funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and KMP.*



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*(c) In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

22. On the basis of documents available on record, my observations on above issues are as under:

**Issue No. 1.** *Whether there is prima face evidence of misrepresentation including of its financials and/or its business and possible violation of LODR Regulations by the company.*

**Issue No. 2.** *Whether there is prima facie evidence that the company is misusing the books of accounts / funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and KMP.*

23. Pursuant to SEBI letter dated August 09, 2017, BSE submitted its report dated August 31, 2017 stating that the company is in compliance with key clauses of LODR Regulations, 2015 for last 3 years. The same has been concluded on the basis of the requirement of filings to be made by the Company. It is also essential to analyse the contents and representations made in the filings to arrive at prima facie findings of any misrepresentation therein.

24. Based on the replies given by the company in response to SEBI's queries, prima facie observations are as under:

- a. It is observed that company has not recovered any interest on the amount of loan given to M/s Yantra Natural resources limited (formerly known as M/s Shree Ganesh Spinners Limited) of Rs. 1.05 Crore even though outstanding for over 7 years and as per the reply of the company vide letter dated September 02, 2017, the loan was given at specific request and friendly guarantee given by some common business friend. The same has been classified under Loans and advances in balance sheet from the FY 2010-11. KIL

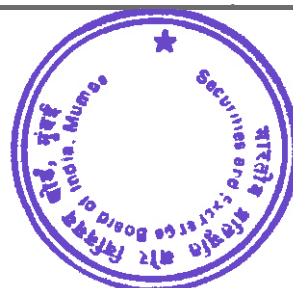


vide its letter dated September 02, 2017, replied that the loan is still outstanding as on date. KIL has informed that it was a friendly loan given so no interest was charged. This is not in the interest of shareholders of the company. Therefore prima facie, directors & KMPs have failed to discharge their fiduciary responsibility.

- b. From the analysis of bank statement (Corporation Bank with A/c No.510101000470189) provided by the company, it is observed that many transactions do not appear to be in the normal course of business and given the previous misuse of funds seriously raises a question on these entries warranting further enquiry in the matter.
- c. It is observed that the company has disclosed that its revenue from operations have increased from Rs. 33.96 crore in F.Y. 2015-16 to Rs. 177.93 crore in F.Y. 2016-17. i.e. increased by Rs. 144 crore (approx.). Further, there is substantial increase in the trade receivables from Rs. 22.05 crore as on March 31, 2016 to Rs. 139.71 crore as on March 31, 2017, i.e. increased by Rs. 117 crores. The sudden spurt in the revenue as well as the trade receivables prima facie raises doubt on the genuineness of these transactions.

25. The Company vide its Annual Report for the period of FY- 2009-10 and 2010 -11, has represented that it has made investments in Prraneta Industries Ltd. to the extent of FY- 2009-10 (Rs. 98,84,402) and 2010 -11 (Rs. 40,62, 730). On a specific query raised vide SEBI letter dated August 16, 2017, the Company stated vide its letter dated August 21, 2017 that it had not made any transactions directly or indirectly with Prraneta Industries Ltd. Thus, it is observed that there is discrepancy in company's Annual Report for the period of FY- 2009-10 and 2010 -11 (available in public domain) and company's reply dated August 21, 2017 submitted to SEBI. Therefore, the company has either misrepresented its financials or made a misrepresentation before SEBI,

26. Therefore, prima facie, there is evidence of misrepresentation by the company and violation of LODR Regulations. There is also prima facie evidence that there was misuse of the books



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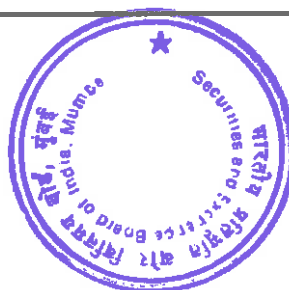
of accounts / funds of the company. The directors & KMPs have also failed to discharge their fiduciary responsibility. The company is also liable for the prima facie violations observed.

***Issue No. 3.** In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

27. In view of the prima facie observations on the misrepresentation by the company and misusing of books / funds, the persons who are in control of the company and the directors of the company are prima facie liable for action by SEBI and should not be permitted to exit the company at the cost of innocent shareholders.
28. The findings in this order have been rendered on the basis of the prima facie evidence available at this stage. However, detailed examination / forensic audit needs to be undertaking to unearth the entire extent of violations.
29. Prior to the action as envisaged in SEBI's letter dated August 07, 2017, the scrip was trading in XT group of BSE with applicable price band in trade to trade category. Pending, enquiry/ audit, it is appropriate to revert the scrip in the said XT group of BSE with applicable price band in trade to trade category.

### **ORDER**

30. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B read with Section 19 of the Securities and Exchange Board



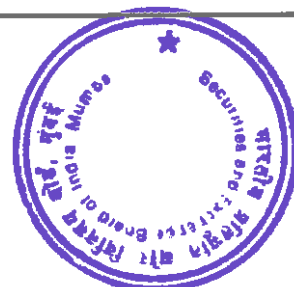
of India Act, 1992, hereby, modify, subject to para 30(iv) of this order, the actions envisaged in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges, against M/s Kavita Industries Limited as under:

- i. The trading in securities of KIL shall be reverted to XT group of BSE with applicable price band in trade to trade category.
- ii. Exchange shall appoint an independent auditor to conduct forensic audit of KIL for verification, including the credentials/financials of KIL.
- iii. The promoters and directors in KIL are permitted only to buy the securities of KIL. The shares held by the promoters and directors in KIL shall not be allowed to be transferred for sale, by depositories.
- iv. The other actions envisaged in SEBI's letter dated August 07, 2017 in para 1 (d) as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against M/s Kavita Industries Limited.

31. The above directions shall take effect immediately and shall be in force until further Orders.

32. The prima facie observations contained in this Order are made on the basis of the material available on record. In this context, M/s Kavita Industries Limited is advised to file its reply/objections to this interim order. The Company within 21 days from the date of receipt of this Order, may file its reply, if any, to this Order and may also indicate whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

33. Copy of this Order shall be forwarded to the recognised stock exchanges for information and necessary action.



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34. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs and Serious Fraud Investigation Office for their information.

DATE: SEPTEMBER 04, 2017

PLACE: MUMBAI



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**MADHABI PURI BUCH  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**