

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

INTERIM ORDER

**Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992
in the matter of K Lifestyle & Industries Limited PAN NO: AABCS1364B**

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 securities 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 whose names were included 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 renegeing 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 K Lifestyle & Industries Limited (hereinafter referred to as **“KLIL” / “Company”**), vide its letter dated August 7, 2017, based on the view stated at para 3 and 4 above. SEBI placed trading restrictions, on the 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 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 measure, trading in scrip was not suspended but allowed under strict monitoring so that investors could take informed investment decisions, till SEBI and Stock Exchanges completed their detailed examination of such companies.
 6. Pursuant to the same, Bombay Stock Exchange Limited (hereinafter referred to as **“BSE”**) vide notice dated August 7, 2017, National Stock Exchange of India Limited (hereinafter referred to as **“NSE”**) vide notice dated August 7, 2017 and Metropolitan Stock Exchange of India Limited (hereinafter referred to as **“MSE”**) vide notice dated August 07, 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.

7. On August 09, 2017, SEBI further advised the Stock 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. In the meantime, aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI and BSE, KLIL filed an appeal No. 266 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). The Hon'ble SAT vide order dated October 06, 2017 directed the following:-

“.....

2. *Counsel for the appellants state that the WTM of SEBI has agreed to give a personal hearing to the appellants on October 11, 2017 and on that day appellants would appear and submit a representation to the WTM, setting out the reasons as to why the order passed against the appellants deserve to be quashed.*
 3. *In these circumstances, we dispose of both the appeals by directing SEBI to pass appropriate order on the representation to be filed by the appellants **within a period of four weeks from the date of receiving the representation.***
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 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.

Hearing and Reply:

10. 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, SEBI vide communication dated October 06, 2017 granted an opportunity of hearing to KLIL on October 11, 2017. KLIL vide its email dated October 10, 2017 requested to reschedule the said hearing to October 12, 2017. The hearing was rescheduled to October 13, 2017 and the same was intimated to KLIL vide email dated October 11, 2017. On October 13, 2017, Mr. Ankit Lohia, Advocate, Ms. Rishika Harish, Advocate, Mr. Amit Bikram Dey, Advocate, Ms. Nirali Mehta, Company Secretary, and Mr. Pushpendra Pratap Singh, Authorized Representatives (hereinafter referred to as "ARs") appeared for KLIL and made oral submissions which are interalia as under:

- a. KLIL has been facing financial problems and its reserves and surplus, which used to be about Rs. 292 crores, has gone down over the years.
- b. KLIL had a turnover of about Rs. 105 crore in 2015-2016.
- c. KLIL's share capital of the Entity has remained constant.
- d. Bank accounts of KLIL stand attached as it defaulted in repayments. Job work is allowed to customers who make direct payments to the employees.

Entity was advised to submit a written representation by October 16, 2017, as per the Order of the Hon'ble Securities Appellate Tribunal dated October 6, 2017. Further, the entity was advised to submit the following information latest by October 30, 2017:

- a. Details of contracts and agreements with customers engaged with the company.
- b. Nature of recompense with respect to such job contracts for utilizing land, building, plant & machinery, equipment, and details of bank accounts reflecting such transaction.
- c. List of customers who are paying for the direct and indirect expenses and agreement/contract to that effect;
- d. Details of transactions with connected and/or related parties and whether Secretarial Audit for due process has been followed in such cases.

- e. Details of the Short Term Loans and Advances along with documentary evidence. In case made to any connected and/or related parties, whether Secretarial Audit for due process has been followed.
- f. Details of Trade receivables along with documentary evidence. In case of connected and/or related parties, whether Secretarial Audit for due process has been followed.
- g. Clarification and details with respect to “Subsidy Receivable” in the Short Term Loans and Advances, for the financial year 2015-2016.
- h. Details of non-current investments of Rs. 69.29 crores in unquoted shares, along with documentary evidence. In case of connected and/or related parties, whether Secretarial Audit for due process has been followed. Basis of valuation of Non-current investments in unquoted shares of Rs. 69.29 crores.
- i. Details with respect to repayment of long term borrowings of Rs. 1.86 crores as per the balance-sheet of 2016 and explanation as to the source of funds utilized for such repayment. Bank statements reflecting showing how such repayment was made.
- j. Details of any Notice/proceeding pending/initiated with any Government Agency/Regulatory body/investigating authority with respect to the company/directors of the company/promoters of the company, including any search proceedings initiated by the Income Tax Department.
- k. Details of any proceeding pending/initiated with SAT/NCLT/DRT.

**“Related party” to include party “connected to promoters”. All the above details are to be provided for the financial years 2015-2016 and 2016-2017.

11. SEBI vide email dated October 16, 2017 has also advised KLIL to furnish the aforesaid information by October 30, 2017.

12. Hon’ble SAT vide order dated October 06, 2017, had directed KLIL to submit the representation to SEBI on the date of hearing and directed SEBI to pass appropriate order on the representation within a period of four weeks from the date of receiving the representation. During the course of hearing dated October 13, 2017, KLIL had failed to submit the written representation, accordingly, SEBI had advised KLIL to submit a written representation by October 16, 2017. KLIL did not

submit a written representation by October 16, 2017 as undertaken during hearing and filed the representation on October 24, 2017 to SEBI. Vide the said representation, KLIL made interalia the following submissions-

- a. KLIL(formerly known as Shree Krishna Polyester Ltd.), is a public limited company registered under the Companies Act, 1956 with the Registrar of Companies, Gujarat, Ahmedabad on Aug 12, 1987. It has authorized Share Capital is Rs. 225 cr. and its paid up capital is approx. Rs. 102 cr.
- b. KLIL is a manufacturing concern, engaged in the manufacture of cotton yarn, synthetic yarn, texturised yarn, knitted fabrics and garments with facilities for processing of knitted and woven fabrics.
- c. The company's plants are located in Bhilad, Piperia (Gujarat), Dombivali, Bhiwandi (Maharashtra). Out of the same, leased out few plants owing to ongoing financial stress and constrains.
- d. As on date approx. 400 employees and/or workers are working with KLIL. Out of same around 35 employees are on the payroll of the company and rest are job workers and/or contractual labours.
- e. KLIL has revenue from operation as on March 31, 2017 is Rs. 58.46 cr.
- f. Market capitalization of KLIL is Rs. 21.47 cr. having 69,274 shareholders out of same 53.39% (for approx. 54,58,38,649 shares) belongs to its promoter and promoter group entities rest 46.61% (for approx. 47,65,44,311 shares) belongs to the public shareholder.
- g. On an average approximately 1,26,260 number of shares of the company are traded daily as per the data available in BSE's website for the period of Jan 2017 to Aug 07, 2017.
- h. The present public notice issued by the relevant exchanges, in pursuance of the SEBI letter has caused, serious prejudice and harm to the company, as many of its shareholders, customers have panicked and are continuously following up the management on the further update on the circular issued, as they could not ascertain any rational of branding us as one of the purported shell companies, placing us in GMS framework and suspending trading in our securities without even providing an opportunity of hearing.
- i. KLIL vide letter dated Sep 25, 2017 provided response to the queries raised by BSE, which are briefly presented below:

- Owing to its bank accounts being declared as NPA, the banking facility of the company was withdrawn. Thereafter, KLIL started doing odd job works so as to continue the operations of plant and machinery, sustain the livelihood its employees/workers. KLIL entered in an arrangement where the customer/client would provide the company with raw cotton yarns and same will be processed by the company and finished yarn will be given to customers, in return customers to make payments to its worker/employees, statutory and operational cost and take care of all other direct and indirect expenses.
 - KLIL had filed a reference under erstwhile BIFR law, however, post December 01, 2016 due to change in law, company was required to file under the insolvency and bankruptcy code, which the company has not filed till date.
 - Total of Rs. 207.22 cr. is outstanding as loan.
 - Pending dispute before income tax authorities for AY 2012-13 (Income Tax Appellate Tribunal) and AY 2013-14.
- j. KLIL approached SAT against the said order wherein SAT directed to the company to file its representation before SEBI and SEBI to pass an order within a period of four weeks from the date of receiving the representation.
- k. KLIL provided the list of documents submitted before BSE along with the copy of the documents.
- l. Company has complied with all regulatory compliances.
- m. KLIL submitted that the direction passed by SEBI vide letter dated Aug 07, 2017 was premature, and requires to be recalled at once.
- n. KLIL requested to provide the copy of the MCA letter and details of the evidence/enquiry conducted by SEBI, based on which the ex-parte directions were passed in the letter dated August 07, 2017. Further, submitted that the impugned directions were after a period of almost 58 days. However, in this 58 days, the company did not receive any communication from SEBI or from exchanges and made aware of the directions only through public notice which are ex-facie wrong but contrary to the legal procedure established in the country.
- o. On failure to respond to the request, KLIL would be constrained to initiate appropriate legal proceed as provided under the law, at the cost and consequence of SEBI.

13. Thereafter KLIL vide its letter dated October 30, 2017 submitted the following information as was sought from the company for FY 2015-16 & 2016-17 during the personal hearing-

Query 1. Details of contracts and agreements with customers engaged with the company.

Reply: *“It is submitted that, we have not entered any agreement/ contract with our customers. The Company is presently doing business based on mutual/ verbal commitments. Please note, we are operating in textile industry for last three decades and so we have good relations and Goodwill with our customers.”*

Query 2. Nature of recompense with respect to such job contracts for utilizing land, building, plant & machinery, equipment, and details of bank accounts reflecting such transaction.

Reply: *“It is submitted that we have plant and machinery in following locations out of the same, part of our plant and machinery are leased to third parties and in few location the same are being run by us.”*

“It is submitted that the recompense received by us for the plants and machinery which are run by us are in the form of sustainability of employment and continuation/ running of Plant and Machinery presently the Company is under financial stress and hence for maintaining our workers and their survival, the Company has entered into present arrangement. Please note, if the plant and machinery is not utilised the same will lose its value and may turn into scrap value.”

Query 3. List of customers who are paying for the direct and indirect expenses and agreement/contract to that effect.

Reply: *“It is stated that, Asahi Industries Limited is paying the Direct/ Indirect Expenses of the Company”*

Query 4. Details of transactions with connected and/or related parties¹ and whether Secretarial Audit for due process has been followed in such cases.

Reply: *“It is stated that on FY 2015-16 the company has not entered any related party transactions.”*

Query 5. Details of the Short Term Loans and Advances along with documentary evidence. In case made to any connected and/or related parties, whether Secretarial Audit for due process has been followed.

Reply: *“It is stated that, no loans and advances were provided to related parties. In any event the details of the loan and advances extended by the Company, is hereto attached and marked as Annexure 1”.*

Query 6. Details of Trade receivables along with documentary evidence. In case of connected and/or related parties, whether Secretarial Audit for due process has been followed.

Reply: *“The details of the debtors for FY 2015-16 is hereto marked and annexed as Annexure 2”.*

Query 7. Clarification and details with respect to “Subsidy Receivable” in the Short Term Loans and Advances, for the financial year 2015-2016.

Reply: *“It is stated that, the company had availed term loans from various banks which were eligible for subsidy under Technology Up Gradation Fund Scheme (TUFSS), which allowed the Company to claim subsidy from the Govt. in case it surpluses certain bench mark as to production. It is stated that, while other banks in consortium claimed subsidy on such term loans under TUFSS, Dena Bank did not claim any amount of the subsidy from the Government of India. The said amount of unclaimed subsidy since inception of loan works out to Rs. 20.80 Cr. Accordingly, a provision of Rs. 20.80 Cr. has been shown in the Balance sheets.”*

Query 8. Details of non-current investments of Rs. 69.29 cr. in unquoted shares, along with documentary evidence. In case of connected and/or related parties, whether Secretarial Audit for due process has been followed. Basis of valuation of Non-current investments in unquoted shares of Rs. 69.29 cr.

Reply: *“It is submitted that the company has made investment in unquoted shares the details pertaining to the same are provided and duly captured in the balance sheet of FY 2015-16. It is submitted that, in relation to unquoted investment made by the Company in unlisted public limited company we crave leave to submit the share certificate of those unlisted public company were the company has made investment, in due course.”*

Query 9. Details with respect to repayment of long term borrowings of Rs. 1.86 cr. as per the balance-sheet of 2016 and explanation as to the source of funds utilized for such repayment. Bank statements reflecting showing how such repayment was made.

Reply: *“It is most humbly submitted that, we are collating necessary details and same will be provided at the earliest.”*

Query 10. Details of any Notice/proceeding pending/initiated with any Government Agency/Regulatory body/investigating authority with respect to the company/directors of the company/promoters of the company, including any search proceedings initiated by the Income Tax Department.

Reply: *“It is submitted there were no search proceeding initiated by the Income Tax Department as of now against the Company and the Promoters of the Company. Though there is investigation pending before CBI BS&FC, Mumbai on the complaint made by UCO Bank against the Company and Directors of the Company.”*

Query 11. Details of any proceeding pending/initiated with SAT/NCLT/DRT.

Reply: *“It is submitted that, presently there are not proceeding pending before National Company Law Tribunal and Securities Appellate Tribunal. However it is submitted that banks have filed any application U/s 19 of RDDB Act, before DRT's. The matter has been filed by Bank of India acting as a leader of Consortium and is pending before DRT-Kolkata.”*

14. The company did not submit the complete information in their reply vide letter dated October 30, 2017. Accordingly, vide email dated November 02, 2017 KLIL was once again advised to submit reply at the earliest latest by November 04, 2017 and was advised to adhere to the timelines considering the SAT deadlines. Shri Jaiprakash Mishra, Managing Director of KLIL vide email dated November 03, 2017 requested for additional 2-3 days' time to submit the required details. Accordingly vide email dated November 03, 2017, KLIL was once again advised to submit its complete reply latest by November 06, 2017. KLIL was also intimated vide the said email that no further request for extension shall be considered. However, despite several opportunities given to KLIL, no further reply was submitted by KLIL.
15. SEBI vide communication dated November 21, 2017 has forwarded the copy of MCA letter dated June 09, 2017 to KLIL.
16. Pursuant to SEBI's letter dated August 9, 2017, BSE submitted its report dated October 09, 2017 stating that the Company has submitted the auditor certificate from A.F. Khasgiwala & Company, Chartered Accountants. As per the Auditor Certificate-

- a. *The Company has filed annual income tax returns for the last 3 years*
- b. *The Company has complied with Companies Act, 2013 and SEBI (LODR) Regulations, 2015*
- c. *Company is a going concern and is engaged in the business of textile industries and manufacturing cotton yarn.*
- d. *The company has made default to bank amounting to Rs. 207.22 crores. The bank account of the company was declared as NPA in the year 2013. Thereafter the banking facility had been stopped then the company started working on barter system. Networth of the company was eroded, thereafter reference was filed before BIFR, and company was registered as sick industrial unit. However, no specific recommendation was made by BSE.*

Consideration:

17. Before moving forward, it is pertinent to deal with the issue raised by KLIL that it had not received the copy of MCA letter dated June 09, 2017. I note that SEBI while issuing the letter dated August 07, 2017 had relied on MCA letter dated June 09, 2017, however, for issuance of present interim order, SEBI has not relied on MCA letter dated June 09, 2017. The below mentioned findings are made pursuant to independent inquiry done by SEBI under sections 11(B) & 11(4) of SEBI Act. However, despite the same, SEBI vide communication dated November 21, 2017 has forwarded the copy of MCA letter dated June 09, 2017 to KLIL.
18. On perusal of the materials available on record, the following prima facie/potential issues arise for consideration.
 - (a) *Whether there is prima facie evidence of misrepresentation including of its financials and/or its business and possible violation of LODR Regulations by the company.*
 - (b) *Whether there is prima facie evidence to show that the company is misusing the books of account/funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are renegeing on the fiduciary responsibility cast on them.*
 - (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.*

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

Issue No. 1. *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.*

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

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

a) During the course of hearing dated October 13, 2017 and SEBI vide email dated October 16, 2017 had advised KLIL to submit the nature of recompense with respect to the job contract for utilizing land, building, plant & machinery, equipment, and details of bank accounts reflecting such transaction. However the company failed to submit the evidence pertaining to recompense w.r.t job contracts for utilizing land, building, plant & equipment, and details of bank accounts reflecting such transactions and had merely submitted that continued operation of the plant and continued employment of staff was considered adequate recompense by them. The company in its reply also submitted that part of the plant & machinery were leased to third parties however, KLIL failed to furnish requisite supporting documents including copy of agreements entered with third parties for leasing company's plant and machinery despite SEBI specifically seeking the same vide email dated November 02, 2017. The failure to provide the backup documents and relevant details, despite the fact that the Company was given several opportunities, prima facie raises suspicion on the genuineness of the transactions and raises the question as to whether these transactions were executed in the best interest of the minority shareholders or not.

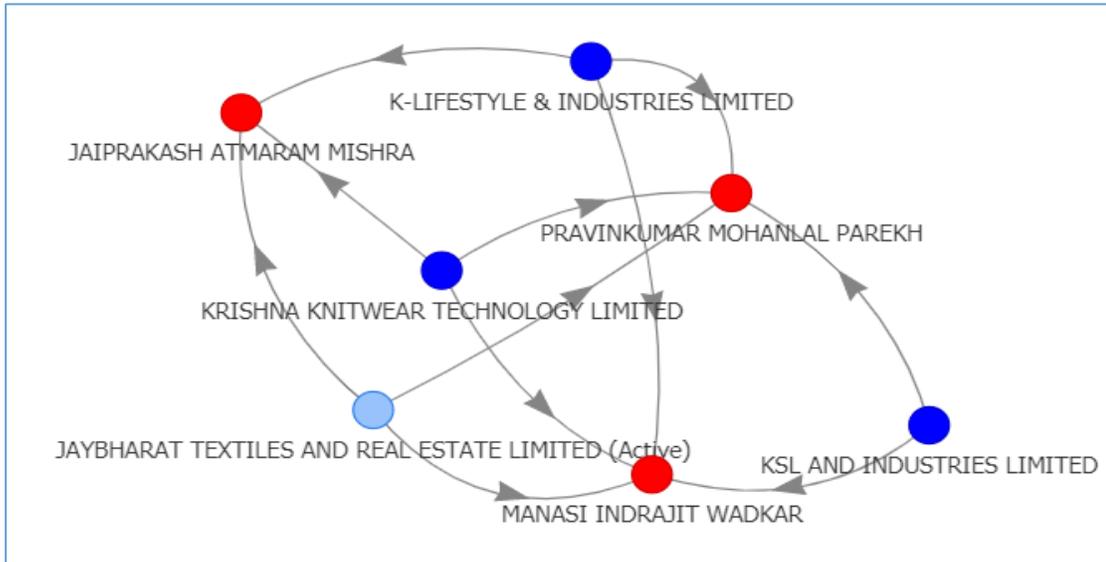
b) During the course of hearing dated October 13, 2017 and SEBI vide email dated October 16, 2017 had advised KLIL to submit list of customers who are paying for the direct and indirect

expenses of the company and provide agreement/contract to this effect for FY 2015-2016 and 2016-2017. KLIL vide its reply dated October 30, 2017 has submitted that all the direct/indirect expenses of the company are borne directly by their customer 'Asahi Industries Limited' (AIL), however, KLIL did not submit the agreement/contract entered with AIL for such arrangement. The failure to provide the backup documents and relevant details, despite the fact that the Company was given several opportunities, supports the prima facie suspicion on the genuineness of the transactions between KLIL and AIL.

Further, KLIL in its representation dated October 24, 2017 submitted that it has replied to BSE that it had entered in an arrangement where the customer/client would provide the company with raw cotton yarns and same will be processed by the company and finished yarn will be given to customers, in return customers to make payments to its worker/employees, statutory and operational cost and take care of all other direct and indirect expenses. This implies that AIL would be the party to whom all the finished goods are supplied. However it is noted that KLIL in its representation dated October 24, 2017 submitted the list of major clients (customers) of KLIL contributing to the revenues of Rs.58.31 cr. as on March 31, 2017 wherein AIL is not even appearing as part of major clients (customer) contributing to the revenues. From the above submissions, it appears that there is a contradiction and inconsistency in the explanation of the company and the data provided. This constitutes a false submission either to BSE or SEBI by the company and is therefore prima facie evidence of misrepresentation of financials.

- c) It is noted that AIL, which the company claims to be a customer paying for the direct and indirect expenses is promoted by Jaybharat Textiles & Real Estate Ltd.(JTREL) which in turn has Ms. Bhawna Tayal as its promoter, who is also promoter of KLIL. Further it is noted that KLIL and JTREL have three common directors as has been provided in the following figure.

Figure 1 : Connection between KLIL and Jaybharat Textiles & Real Estate Ltd.



Source: www.tofler.in

Further, it is observed in the Annual Reports of AIL for FY 10-11, FY 11-12 and FY 12-13, that AIL is primarily an enterprise of Tayal's. It has been noticed that the current director as on FY 16-17 of KLIL, Mr. Narayan Ghumatkar served on the board of AIL as Managing Director in 2014-15, 2012-13, 2011-12 and Chairman cum Managing Director in 2013-14. Thus, AIL and KLIL are connected parties and in the absence of agreement/ contract between them, further examination is needed as to whether interest of minority shareholders were served or not by KLIL while dealing with AIL.

- d) With regard to Subsidy Receivable, during the personal hearing clarification and details with respect to "Subsidy Receivable" in the Short Term Loans and Advances was sought from KLIL for the financial year 2015-2016, however KLIL did not submit any documents showing calculation of subsidy receivable amount of Rs. 20.80 cr., documents pertaining to the term loan, other documents showing that the company is eligible for the subsidy & the benchmark production.

KLIL vide its reply dated October 30, 2017 had merely stated that the company had availed term loans from various banks which were eligible for subsidy under Technology Up gradation Fund Scheme (TUFS), which allowed the Company to claim subsidy from the government in

case it surpluses certain bench mark as to production. KLIL further stated that, while other banks in consortium claimed subsidy on such term loans under TUFS, Dena Bank did not claim any amount of the subsidy from the Government of India. The said amount of unclaimed subsidy since inception of loan works out to Rs. 20.80 Cr. Accordingly, a provision of Rs.20.80 Cr. has been shown in the Balance sheets. In this regard I note that as per the Ministry of Textiles Resolution No. 6/19/2013-TUFS dated October 04, 2013

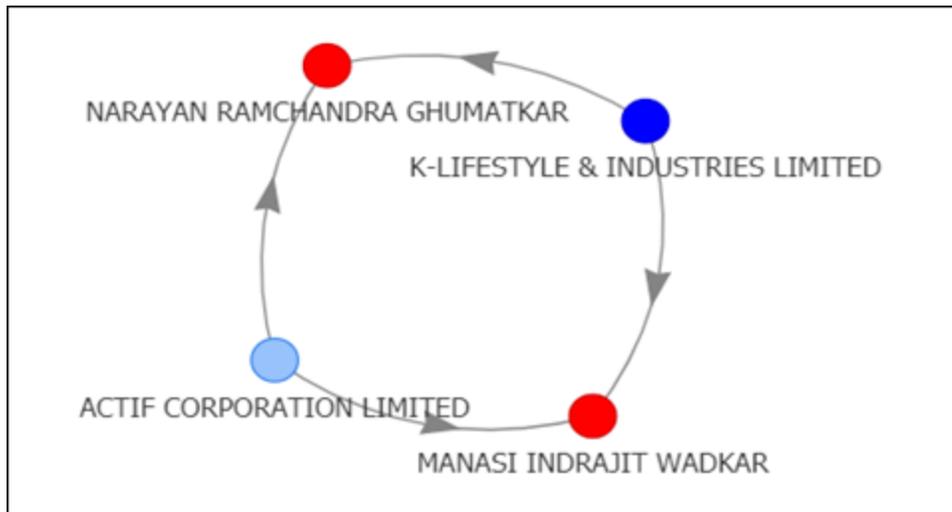
"Subsidy under TUFS is in the form of Reimbursement of Interest paid by the unit concerned to the Lending agencies for the loan disbursed and therefore the units are eligible for subsidy only in cases where loan has been disbursed and interest has been paid by the unit to the Lending Agency. Lending agencies shall submit the claims based on actual claims received from their branches."

As per the aforesaid resolution subsidy under TUFS is given in the form of Reimbursement of Interest paid however, as per the representation of KLIL dated October 24, 2017, KLIL has been declared as NPA in 2013 and as per the list of the banks the company has defaulted in its loan to Dena Bank, UCO Bank, PNB and BOI. Hence, prima facie it appears that the claim of the company stands ineligible as KLIL was declared NPA in 2013 and was not in a position to pay any interest on the term loan as required under the resolution passed by Ministry of Textiles and, therefore KLIL couldn't be eligible for any subsidy. In view of the same, it appears that KLIL has misrepresented its financials to the extent of Rs. 20.80 cr.

- e) During the personal hearing KLIL was sought to provide details of non-current investments of Rs. 69.29 Cr. along with documentary evidence and the basis of its valuation, however the company did not submit any supporting document (share certificate) for investment in unquoted shares and basis of valuation of such investments. The failure to provide the backup documents and relevant details, despite the fact that the Company was given several opportunities, leads to the prima facie suspicion on the genuineness of its non-current investment.

Further, as per the Annual Report 2015-2016, KLIL's investment in preference shares of Actif Corporation Ltd. amounts to Rs. 22.19 cr., and the current directors of KLIL, Mr. Narayan Ghumatkar and Ms. Manasi Indrajit Wadkar are also the directors in Actif Corporation Ltd. the same is shown in the following Fig.

Figure 2-



Source: www.tofler.in

Thus, AIL and Actif Corporation Ltd. are related parties and further examination is needed as to whether interest of minority shareholders were served or not by KLIL while dealing with Actif Corporation Ltd.

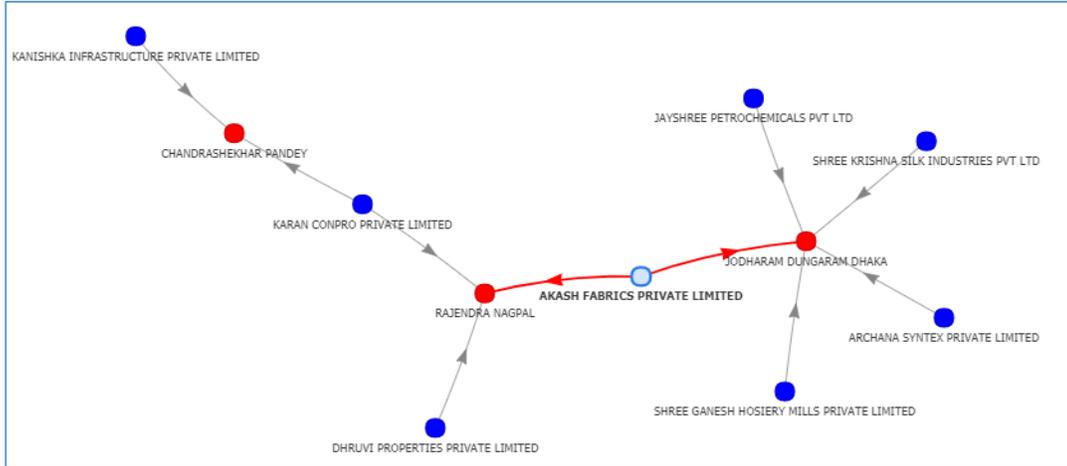
- f) During the course of hearing dated October 13, 2017 and SEBI vide email dated October 16, 2017 had advised KLIL to submit the details of any Notice/proceeding pending/initiated with any Government Agency/Regulatory body/investigating authority with respect to the company/directors of the company/promoters of the company, including any search proceedings initiated by the Income Tax Department. It is noted that the company in its reply dated October 30, 2017 stated that there is investigation pending before CBI Banking Security & Fraud Cell, Mumbai on the complaint made by UCO Bank against the Company and Directors of the Company. KLIL further submitted that the banks have filed an application u/Section 19 of RDDB Act, before DRTs and the matter has been filed by Bank of India acting as a leader of Consortium and is pending with DRT-Kolkata. KLIL vide emails dated November 02, 2017 and November 09, 2017 was asked to furnish the details of the investigation and the nature of complaint made by UCO Bank and details of matter filed by Bank of India, however, KLIL has not submitted the said details till date. SEBI vide email

dated November 16, 2017 had requested to BSE to confirm whether KLIL had disclosed the information pertaining to the said investigation being carried out by CBI BS & FC, Mumbai. BSE vide mail dated November 17, 2017 confirmed that Exchange has not received any disclosure pertaining to investigation being carried out by CBI from KLIL. The aforesaid information prima facie appears to be a material information and as per Regulation 30 of LODR Regulations, KLIL was required to make the disclosure of said information to Stock Exchanges, which it had failed to do so. Thus, prima facie it appears that KLIL had violated Regulation 30 of LODR Regulations.

- g) During the course of hearing dated October 13, 2017 and SEBI vide email dated October 16, 2017 KLIL was asked to provide the details with respect to repayment of long term borrowings of Rs. 1.86 crores as per the balance-sheet of 2016 and explanation as to the source of funds utilized for such repayment including bank statement. The company did not submit any details w.r.t repayment of long-term borrowing and no explanation is given as to the source of funds utilized for such repayment. The failure to provide the backup documents and relevant details, despite the fact that the Company was given several opportunities, the prima facie indicates suspicion on the genuineness of the transactions
- h) During the course of hearing dated October 13, 2017 and SEBI vide email dated October 16, 2017 had advised KLIL to submit the details of the Short Term Loans and Advances along with documentary evidence and in case made to any connected and/or related parties, whether Secretarial Audit for due process has been followed. SEBI during the personal hearing on October 13, 2017 and vide email dated October 16, 2017 clarified that “Related party” to include party “connected to promoters”. The company did not submit any documentary evidence for short term loans & advances for FY 2015-16 & 2016-17 and vide letter dated October 30, 2017 had only submitted breakup of loans & advances of Rs. 29.25 cr. as on March 31, 2016, however KLIL had failed to submit the break-up/details of year 2016-17 and supporting documents for both years i.e. 2015-16 and 2016-17. Further KLIL in its reply stated that no loans and advances were provided to related parties, however, it appears that one of the promoters of KLIL, Akash Fabrics Pvt. Ltd. (7.43%)

appears to be connected with Dhruvi Properties Pvt. Ltd., one of the entity appearing in the short term loans & advances through a common director Mr. Rajendra Nagpal.

Figure 3: Connection with Promoters of KLIL with Dhruvi Properties Pvt.Ltd.



Source: www.tofler.in

Thus in view of the above connection of Dhruvi Properties Pvt. Ltd. to promoter of KLIL and clarification to KLIL that “Related party” to include party “connected to promoters, the submission of KLIL that no loans and advances were provided to related parties appears to be a false submission on part of KLIL and further examination is needed as to whether interest of minority shareholders were served or not by KLIL.

- i) KLIL has failed to supply relevant/adequate supporting evidence despite several opportunities granted to it for the following items for 2015-16 & 2016-17 pertaining to-
 - i. KLIL had failed to submit the contract and agreements with customers engaged with the company.
 - ii. KLIL had failed to submit evidence pertaining to recompense w.r.t job contracts for utilizing land, building, plant & equipment, and details of bank accounts reflecting such transactions.
 - iii. The company did not submit any documentary evidence for short term loans & advances for FY 2015-16 & 2016-17.

- iv. KLIL had not submitted any details pertaining to Trade Receivables except for the break-up for the year 2015-16. Further KLIL did not submit any documentary evidence for Trade Receivables for FY 2015-16 & 2016-17.
- v. KLIL has not submitted any details pertaining to repayment of Long term and Short term borrowing.
- vi. The company did not submit any supporting document (share certificate) for the non-current investment.
- vii. KLIL did not submit details of the investigation and the nature of complaint made by UCO Bank and details of matter filed by Bank of India

It is noted that under Section 11 (2) of SEBI Act, SEBI has been conferred with the power of seeking information from any person mentioned therein. Further under Section 11B of SEBI Act, 1992, SEBI has been given power to pass necessary directions pending or on completion of enquiry. While conducting enquiry, SEBI can seek information at various stages of enquiry. The said persons from whom information is sought are obligated to provide the information sought by SEBI. In exercise of the said powers, SEBI while conducting enquiry had sought for certain specific information from KLIL at the time of hearing and also vide its email dated October 16, 2017 and November 02, 2017 (mentioned above). However, KLIL in non-compliance of its obligation to provide information, till date, despite numerous reminders, has failed to submit the complete information sought from it.

21. From the above I note the followings:

- (a) KLIL has shown Subsidy Receivable in the Short Term Loans and Advances to the amount of Rs. 20.80 cr financial year 2015-2016. However as per Ministry of Textiles Resolution No. 6/19/2013 subsidy under TUFS is given in the form of Reimbursement of interest paid whereas KLIL has been declared as NPA in 2013 as per its representation. In view of the same, it appears that KLIL has misrepresented its subsidy receivable to the extent of Rs. 20.80 cr. Thus, there appears to be *prima facie* evidence that the company has misrepresented its financials.

- (b) As per regulation 30 of LODR Regulation, KLIL was required to disclose material information to Stock Exchanges. The information pertaining to the investigation being carried out by CBI Banking Security & Fraud Cell, Mumbai against the company and its directors prima facie appears to be material information which is required to be disclosed to stock exchanges in accordance with Regulation 30 of LODR Regulations, which KLIL had failed to do.
- (c) That Company has failed to submit sufficient documents to substantiate agreements/contracts entered with third parties for leasing company's plant & machinery; agreements/contracts entered with Asahi Industries Ltd.; agreements/contracts for providing loans and advances; agreements/contracts entered with debtors of the company; share certificates of non-current investments; repayment of long term borrowings and details of the matter filed by UCO Bank and Bank of India. Further, despite several reminders, the company/its directors have failed to submit the information along with documentary proof sought by SEBI at the time of hearing, vide emails dated October 16, 2017 and November 02, 2017. Thus, there is prima facie suspicion regarding the misuse of books of accounts/funds by the company.

22. Thus, there is *prima facie* evidence of misrepresentation of business/financials as well as suspicion of misuse of funds/ books of accounts of the company. The directors & KMPs have therefore prima facie failed to discharge their fiduciary responsibility. The company is also liable for the *prima facie* violations observed and it is imperative that in the interest of investors, the financials of the company be independently audited to establish their genuineness.

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.*

23. In view of the *prima facie* evidence on the misrepresentation of business/financials by the company as well as suspicion of misuse of funds/ books of accounts of the company, the persons who are

in control of the company and the directors/promoters 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.

24. The findings in this order have been rendered on the basis of the prima facie evidence available at this stage. Detailed examination / forensic audit needs to be undertaken to unearth the entire extent of violations.

25. Further, pending enquiry/ audit, considering the interest of public shareholders involved in KLIL, I find it is appropriate to revert the trading in the securities of KLIL to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.

26. In view of the above, I am of the view that following urgent interim actions are required to be taken, pending further enquiry/audit.

INTERIM ORDER

27. 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 27(iv) of this order, the actions envisaged in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges, against K Lifestyle & Industries Limited as under:

- i. The trading in securities of KLIL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
- ii. Exchange shall appoint an independent forensic auditor *inter alia* to further verify:
 - a. Misrepresentation including of financials and/or business by KLIL, if any;
 - b. Misuse of the books of accounts / funds including facilitation of accommodation entries, if any and transaction not in the interest of minority shareholders, if any.

- iii. The promoters and directors in KLIL are permitted only to buy the securities of KLIL. The shares held by the promoters and directors in KLIL 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 K Lifestyle & Industries Limited.
28. The '*directors*' for the purpose of direction mentioned at para 27(iii) above shall mean and include:
- (a) the persons who are acting as directors on the date of this order, or
 - (b) the persons who are acting as directors of this company as on August 07, 2017, who cease to be director, by way of disqualification by any other authority, or by way of resignation or by any other means, on or after August 07, 2017.
29. Accordingly the representation of K Lifestyle & Industries Limited is disposed of.
30. The above directions shall take effect immediately and shall be in force until further Orders.
31. The prima facie observations contained in this Order are made on the basis of the prima facie material available on record. In this context, K Lifestyle & Industries Limited is advised to file its reply/objections to this interim order. The company, from the date of receipt of this Order, may file its reply, if any, receivable by SEBI within 30 days from such receipt, and may also indicate in the reply 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, if any. In the event of K Lifestyle & Industries Limited failing to file reply or requesting for an opportunity of personal hearing in its reply within the said 30 days, the preliminary findings of this Order and ad-interim directions at para 27 above shall stand confirmed automatically, without any further orders.

32. Copy of this Order shall be forwarded to the recognized stock exchanges & depositories for information and necessary action.

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

-Sd-

DATE: NOVEMBER 21, 2017

PLACE: MUMBAI

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