

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

Sl. No.	NAME	PAN
1.	M/s Kkalpana Industries (India) Industries Limited	AABCK2239D

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 whose names are 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 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 Kkalpana Industries (India) Limited (hereinafter referred to as “**KIIL**” / “**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 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 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. KIIL vide its letters dated August 08, 2017 and August 10, 2017 had made representations to BSE with a copy to SEBI submitting *inter alia* as under:
 - (a) Company has been in operation since the year 1985 and has existence in more than 5 states & union territories. Company has manufacturing units at Dadra & Nagar Haveli, Daman & Diu and West Bengal. The unit located at Dadra & Nagar Haveli is the single largest polyethylene compound producing unit in entire South East Asia with an annual capacity of 1.2 lac tonnes. Company is also the single largest import substitute in India for this type of product and are driving the make in India campaign unleashed by Hon'ble Prime Minister of India.
 - (b) Company is a manufacturing company having a gross turnover of approximately Rs. 2000 crore in the Financial Year (FY) 2015-16 and turnover of approximately Rs. 1200 Crores and more in the preceding 3 financial years. The Audited Financial Results for the last 3 financial years were submitted.
 - (c) Company is a star trading unit and have exports of more than Rs. 300 crores in approximately 33 countries.
 - (d) Company has a wide shareholders base of approximately 7500 and more spreading across the country.
 - (e) Company has not made any defaults in repayment of Bank Loans. There has been no instance of malpractices in stock market by the Company.

- (f) Company's all compliances in regard to LODR Regulations and Companies Act, 2013 are up to date.
- (g) Company has a dedicated Registrar and Share Transfer Agents to handle the shareholder Grievances on regular basis.
- (h) Company has been regularly declaring and paying dividend atleast since 2007-08 till 2013-14.
- (i) Company has 9 registrations under GST regime all across India. Company is a regular tax payer and paying taxes from almost 30 years. Company has paid Direct Taxes of more than Rs. 25 Crores in last five years. (Copies of Income Tax Return are enclosed). Company has also paid Indirect Taxes of more than Rs. 500 Crores in last five years.

9. In the meantime, aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI and BSE, KIIL filed an appeal No. 180 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:-

".....

1. *Without conducting any investigation and without hearing the appellant, whether the Securities and Exchange Board of India ("SEBI" for short), solely based on the letter dated 09.06.2017 received from the Ministry of Corporate Affairs (MCA), is justified in passing the ex-parte order on 07.08.2017 and directing the stock exchanges to treat, inter alia, the appellant company as a 'suspected shell company' and suspend the daily trading in the securities of the appellant company on the stock exchanges by moving the securities of the appellant company to Stage VI of Graded Surveillance Measure ("GSM" for short) is the question raised in this appeal.*
2. *Similar question was raised in the case of J. Kumar Infraprojects Ltd. (Appeal No. 174 of 2017) and by our order dated 10.08.2017 we have stayed direction 1(a) & (b) contained in the impugned communication of SEBI dated 07.08.2017 qua the appellant therein.*

3. *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.*
4. *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.*
5. *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.*
.....”

10. The Hon'ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* as well as in the matter of *Prakash Industries Limited vs. SEBI* both 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 without 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.

11. SEBI vide letter dated August 16, 2017 had advised KIIL to provide following information:

- (a) Connection with Mr. Ajay Anand Puglia and summary of any dealings of the Company with or through Mr. Ajay Anand Puglia, either directly or indirectly, and the nature and quantum thereof. You are advised to provide all the relevant documents with respect to the above information.

(b) Further, the company was also requested to furnish 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.

12. KIIL vide its letter dated August 21, 2017 submitted the information sought by the SEBI's letter dated August 16, 2017 which are as under:

“.....

(a) *The company has no connection with Mr. Ajay Anand Puglia and has not entered into any dealings with/through the said person.*

(b) *The company outsources majority of its payroll functions through M/s S P Chatterjee & Co. Chartered Accountants. They have provided a certificate alongwith complete list of employees and the details sought in the letter including the provident fund contributions is enclosed.*

(c) *Apart from the above, few of the employees are directly paid by the Company; the details of same have been enclosed.... Moreover, we also employ more than 900 laborers through 17 contractors all across our factories in India making monthly provident fund contribution of more than Rs. 5 Lacs.*

.....”

Hearing and Reply:

13. 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 September 07, 2017 granted an opportunity of hearing to KIIL on September 13, 2017. On September 13, 2017, Mr. Rajesh Kothari, Whole Time Director and Mr. Arihant Bothra, Manager Finance &

Commercial, of KIIL, Authorized Representatives (hereinafter referred to as “ARs”) appeared for KIIL and made oral submissions which are as under:

- (a) *KIIL came into existence in the year 1985. Company is in the business of manufacturing of Polyvinyl Chloride (PVC). In the year 1993, KIIL came with public issue and got listed in BSE. Company had 7 manufacturing plant, 4 in West India and 3 East India. There are approximately 1500 employees in the company either on payroll or through contractors. Company had a large base of customers.*
- (b) *Company had no connection with Mr. Ajay Anand Puglia and has not entered into any dealings with/through the said person.*
- (c) *Company submits the power point representation dated September 13, 2017.*

The company was advised to submit the information / response on the following points (supported by documentary evidence) latest by September 18, 2017:

- (a) *Relationship of KIIL with M/s Jaqua Industries and sales Companies Pvt Ltd., M/s Tara Holdings Pvt Ltd. and M/s Shyam Baba Trexim Pvt. Ltd.*
- (b) *Summary of any dealings of the aforesaid three entities with or through Mr. Ajay Anand Puglia either directly or indirectly, and the nature and quantum thereof with supporting documents. For the period of 2005 to 2009.*
- (c) *Cash and Bank balance of company as per FY 2015-16 is Rs. 27.77 crore. Bank statements of the company showing the balance of Rs. 27.77 crore in its cash & bank balance entry of Balance sheet of FY 2015-16.*
- (d) *Explanation and details of Short term loans and advances of Rs 63.28 crore (Balance sheet of FY 2015-16) i.e. split up of Note 17 of Financial statements (page 74 of annual report 2015-16).*
- (e) *Affidavit of current CMD i.e. Mr. Narrindra Suranna stating whether he has, at any time, known or had spoken to or had an agreement with Mr. Ajay Anand Puglia or its related entity and if yes, details of what that was related to?*

(f) *Affidavit of Chairman & Managing Director of Shyama Baba Trexim Pvt. Ltd. stating whether they have, at any time, known or had spoken to or had an agreement with Mr. Ajay Anand Pugalia and if yes, details of what that was related to?*

14. SEBI vide email dated September 14, 2017 has also advised KIIL to furnish the aforesaid information by September 18, 2017.

15. KIIL vide its letter dated September 18, 2017 submitted the information sought by SEBI at the time of hearing and vide email dated September 14, 2017 which are as under:

(a) *Reply to query (a): Shyam Baba Trexim Private Limited (in short “Shyam Baba Trexim”) is shareholder of the Company and its shareholding in the Company is included in promoter’s shareholding. Tara Holdings Private Limited (in short “Tara Holdings”) ceased to be shareholder of the Company with effect from September 2010. Whilst Tara Holdings held shares in the Company, its shareholding in the Company was included in promoters’ shareholding. Jaqua Industries & Sales Company Private Limited (in short “Jaqua”) ceased to be a shareholder of the Company since March 2017. Shareholding of Jaqua in the Company did not form part of the promoters’ holding in the company.*

(b) *Reply to query (b): Shyam Baba Trexim had no dealing with or through Mr. Ajay Anand Pugalia. Tara Holdings had no transaction with or through Mr. Ajay Anand Pugalia whilst shareholding of Tara Holdings in the company formed part of the promoter’s holding. The Company had no knowledge about dealing and transactions of Jaqua since shareholding of Jaqua in the company did not form part of promoters’ holding in the company. The Company had never received any sum of money from nor paid any sum of money to Mr. Ajay Anand Pugalia or any Company/concern under his control.*

(c) *Reply to query (c): The details of Cash and Bank balances comprises of the following:*

Particulars	INR in Lacs
<i>Cash in Hand</i>	112.19
<i>Balance with Bank:</i>	
<i>In Current Accounts</i>	541.26
<i>In EEFC account</i>	250.74
<i>In Margin & guarantee deposits</i>	1,831.58
<i>In Unpaid Dividend Account</i>	41.92
Total	2,777.69

The details on Cash in hand as on 31st March, 2016 is enclosed.

The Company has 40 current bank accounts having cumulative balance of INR 541.26 Lacs as at 31st March, 2016; the details of the Bank accounts are enclosed. The Bank statements showing closing balances as at 31st March, 2016 are enclosed.

The Company has Exchange Earnings in Foreign Currency (EEFC) account with HDFC Bank and the bank statement of this account showing closing balance as at 31st March, 2016 of USD 3,77,998.46 equivalent to INR 250.74 Lacs is enclosed.

The Company has obtained Letter of Credit, Buyers Credit and Bank Guarantee limits from various Banks against Fixed deposits as margin money. The details of fixed deposits amounting to INR 1,831.58 Lacs are enclosed. The confirmation letter of Banks are enclosed.

The unpaid dividend accounts relate for the period on and from financial year 2008-09 to 2013-14. The details of Bank accounts relating to unpaid dividend accounts showing closing balance as at 31st March, 2016 are enclosed.

- (d) Reply to query (d): *The details of Short term loans and advances as at 31st March, 2016 is as under:*

Particulars	INR in Lacs
<i>Prepaid Expenses</i>	190.70
<i>Balance with Government</i>	5,050.78
<i>Inter-corporate deposits</i>	32.28
<i>Other Loans and Advances</i>	1,054.25
Total	6,328.02

The details of prepaid expenses amounting to INR 190.70 Lacs as at 31st March, 2016 are enclosed. The details of the balance with government authorities as at 31st March, 2016 are enclosed. The Company had granted inter corporate deposit including interest as at 31st March, 2016 of INR 32.27 Lacs to M/s. Gloster Cables Limited. Details of other Loans and advances amounting to INR 1,054.25 Lacs are enclosed.

(e) Reply to query (e): *As desired by you an affidavit of Narrindra Suranna is enclosed.*

(f) Reply to query (f): *An affidavit of Shyam Sundar Mohta, the director of Shyam Baba Trexim is enclosed.*

16. On perusal of the Company's response dated September 18, 2017, SEBI vide email dated November 09, 2017 has advised KIIL to furnish the following information:

(a) *There is one account number having account name as Bavaria Poly Pvt. Ltd. (at account mentioned at number 28, 29 & 31 of Annexure 2 & 3). How is this Company related to Kkalpana Industries (India) Ltd (KIIL)? Is it a subsidiary of KIIL? If yes, then what is holding of KIIL in the Company and why is not reflecting in the annual report of KIIL?*

(b) *At Annexure 3's account number 39, there is a debit entry to entity Dimond Polymers Pvt Ltd and Fastspeed Marcom Pvt Ltd and 3 debit entries to Megapix Dealmart Pvt Ltd. How are these Companies associated with the Company?*

17. KIIL vide its letter dated November 11, 2017 submitted the information sought by SEBI vide email dated November 09, 2017 which are *inter alia* as under:

“

(a) Reply to query (a): *In the year 2011, Bavaria Poly Private Limited (Bavaria) was engaged in the business of manufacturing plastic agglomerates and held a leasehold property at Falta Export Processing Zone, West Bengal, as well as an Industrial License granted by*

the Ministry of Commerce & Industry, Falta Special Economic Zone, to manufacture and export plastic agglomerates.

In the year 2011, a scheme of amalgamation was propounded by and between our Company and Bavaria for amalgamation of Bavaria with our Company.

By an order dated 28th July 2011, the Hon'ble Calcutta High Court sanctioned the said scheme of amalgamation of Bavaria with our Company. Subsequent to such amalgamation our Company had approached the Ministry of Commerce & Industry for transfer of the Industrial License in the name of our company and in spite of repeated requests and reminders the Industrial License was not transferred in the name of our company for several years. Ultimately, on 14 February 2017, the Falta Special Economic zone transferred the Industrial License of Bavaria in the name of our Company. In this connection a copy of the letter dated 14 February 2017 issued by Falta Special Economic Zone is enclosed.

Since the Industrial License was not transferred in the name of our Company, our Company was compelled to carry on business at Falta Export Processing Zone in the name of Bavaria and that was the reason the Company continued to operate the Bank Account in the name of Bavaria.

The Company is now carrying on business at Falta Export Processing Zone in its own name. Prior to February 2017 the Company had raised Invoices in the name of Bavaria and the Company has now realised outstanding payments and has taken steps to close the Bank Account standing in the name of Bavaria. Please also note that Bavaria was never a subsidiary of our Company

(b) Reply to query (b): Please note that debit entries relating to payments made to Dimond Polymers Private Limited (Dimond) and Megapix Dealmart Private Limited (Megapix) relate to payments made by the Company to Dimond and Megapix against supplies of goods made by the said two entities to the Company.

The credit entry relating to Fastspeed Marcom Private Limited (Fastspeed) relates to payments received by the Company from Fastspeed against sale of goods effected by the Company to the said entity.

Please further note that the said three entities, viz., Dimond, Megapix and Fastspeed are not related parties within the meaning of Section 2(76) of the Companies Act, 2013 with reference to our Company.

18. Pursuant to SEBI's letter dated August 9, 2017, BSE submitted its report dated September 07, 2017 stating that Company has submitted the auditor certificate from B. Mukherjee & Co., Chartered Accountants, certifying the following:

- (a) Company has filed income tax returns for the last three financial years (FY). Further, Income Tax department has raised a demand of Rs. 31 lakhs for FY 2011-12 against which company has filed an appeal which is pending.
- (b) Complied with Companies Act requirements & annual return filing during last three years.
- (c) Company is a going concern.
- (d) Company has no default in any loans with any banks / financial institutions.
- (e) Company has complied with all listing regulation requirements for last three years
- (f) Company is also in compliance with key clauses of SEBI (LODR) Regulations, 2015 for last 3 years since quarter ended September 2014 till date.

BSE recommended that based on the submission made by the Company, prima facie, Company appears to be in order.

Consideration:

19. 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 reneging 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.

20. 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 reneging on the fiduciary responsibility cast on them.*

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

(a) Vide affidavit dated September 16, 2017, Mr. Narrindra Suranna stated as under:

- (i) He is the Chairman-cum-Managing Director of KIIL.
- (ii) He does not know any person by the name of Ajay Anand Pugalia and has never spoken to any such person. As he does not know Ajay Anand Pugalia, the question of his entering into any agreement with Ajay Anand Pugalia on behalf of KIIL or on behalf of any Company forming part of the promoter's holding in KIIL does not arise at all.

(b) Vide affidavit dated September 16, 2017, Mr. Shyam Sunder Mohta has stated as under:

(i) He is the Director of Shyam Baba Trexim Private Limited (SBTPL). He was appointed as Director in SBTPL on August 27, 2009 and since then he was functioning as a Director of SBTPL.

(ii) He does not know any person by the name of Ajay Anand Pugalia and has never spoken to any such person. As he does not know Ajay Anand Pugalia, the question of his entering into any agreement with Ajay Anand Pugalia on behalf of the SBTPL or on behalf of any other Company forming part of the promoter's holding in KIIL does not arise at all.

(c) During the course of hearing and vide email dated September 14, 2017, SEBI had advised KIIL to submit the summary of any dealings of M/s Jaqua Industries & Sales Companies Private Limited (JISCPL), M/s Tara Holdings Private Limited (THPL) and SBTPL with or through Mr. Ajay Anand Pugalia either directly or indirectly, and the nature and quantum thereof with supporting documents for the period of 2005 to 2009. KIIL in its reply dated September 18, 2017 stated that SBTPL is the shareholder of KIIL and its shareholding in KIIL is included in promoter's shareholding and SBTPL had no dealing with or through Mr. Ajay Anand Pugalia. THPL had no transaction with or through Mr. Ajay Anand Pugalia whilst shareholding of THPL in KIIL formed part of the promoter's holding. KIIL had no knowledge about dealing and transactions of JISCPL since shareholding of JISCPL in KIIL did not form part of promoters' holding in KIIL. KIIL had never received any sum of money from nor paid any sum of money to Mr. Ajay Anand Pugalia or any Company/concern under his control.

(d) During the course of hearing and vide email dated September 14, 2017, SEBI had advised KIIL to submit the explanation and details of Short term loans and advances of Rs 63.28 crore (Balance sheet of FY 2015-16) i.e. split up of Note 17 of Financial statements (page 74 of annual report 2015-16). KIIL vide its reply dated September 18, 2017 has provided split up of Note 17 of financial statements (page 74 of annual report FY 2015-16). Out of

the total amount of Rs 63.28 crores, KIIL has balance with Government Authorities of Rs. 50.50 crores.

Vide email dated February 14, 2018 SEBI had asked KIIL to submit the information / evidence with respect to short term loans and advances with Government Authorities of Rs. 50.50 Crores and prepaid expense for insurance premium of Rs. 1 crore as on March 31, 2016.

KIIL vide letters dated February 20, 2018, April 17, 2018, April 30, 2018 and May 22, 2018 had submitted the split up and evidence of balance with government authorities and insurance premium. Details of split up of balance of Rs. 50.50 crores with government authorities are as under:

Sr. No.	Particular	Amount in Rupees	Break -up
1	Balances lying in Excise return	22,17,37,569	Central excise Duty- Rs. 19,15,03,875 and Service Tax- Rs. 3,02,33,694
2	Balances lying under MAT and Advance Tax	9,83,92,073	Income tax Advance & TDS- Rs. 3,07,93,219 and Minimum Alternate Tax- Rs. 6,75,98,854.
3	Value Added Tax Refundable	3,08,61,900	Sales Tax- Rs. 3,08,61,900
4	Sales Tax Paid to Government Authorities	2,43,82,825	Sales Tax- Rs. 2,43,82,825
5	Excise duty refundable against export	1,53,13,679	Central Excise duty-Rs. 1,53,13,679
6	CENVAT Balances lying at warehouse stock	8,62,71,792	Custom Duty paid as advance- Rs. 61,17,015, Service Tax-Rs. 11,15,266 and Central Excise Duty-Rs. 7,90,39,511

Sr. No.	Particular	Amount in Rupees	Break -up
7	CENVAT Balances against capital goods/service tax ISD	2,81,18,316	Custom Duty paid as advance- Rs. 1,08,15,349, Service Tax- Rs. 1,04,53,563, Central Excise Duty – Rs. 67,06,199 and Sales Tax – Rs. 1,43,206
		50,50,78,155	

- For balance lying in excise return, KIIL provided the ER-1 forms submitted for payment of tax to Central Board of Excise and Customs (CBEC) for total amount of Rs 22.17 crores for its different registered units. SEBI observed that the amount mentioned in ER1 forms of various units add up to Rs. 22.17 crores.
- For balance lying under MAT and Advance Tax, KIIL provided Form 26-AS for Financial Year (FY) 2015-16 (Rs 3.079 crores) and income tax return (Form ITR-6) for FY 2015-16 (amount of MAT Credit is Rs 6.759 crores). SEBI observed that the MAT credit in ITR-6 for FY 2015-16 was matched to Rs. 6.759 crores.
- For balance lying under Value Added Tax Refundable, KIIL has submitted the Forms DVAT 22 corresponding to the refund allowed. SEBI note that the total refund claim amount minus (the refund allowed + refund not allowed) is the outstanding amount lying with the government authority as on March 31, 2016 is Rs.3.09 crores.
- For balance lying under Sales Tax, KIIL has submitted challans issued in its name amounting to Rs. 2.43 crores. SEBI observed that the amount of approximately Rs. 2.43 crores is tallying with challans submitted by KIL.
- For balance lying under Excise duty refundable against exports for FY 2015-16, KIIL has provided following documents:
 - (i) **For Silvassa unit:** photo copy of cheques received by the company from Ministry of Finance, CBEC for refund of export invoices.

(ii) **For Bhasa unit:** Photo copy of Orders passed by Dy. Commissioner of Central Excise w.r.t. its excise duty refund, bank receipt vouchers corresponding to the excise duty refund and bank statement entries corresponding to the excise duty refund.

- For CENVAT balance lying at warehouse stock and CENVAT balances against capital goods/service tax etc. KIIL has submitted the statement showing ledger balances reflecting the figures not reflected in ER-1 for CENVAT balances lying in warehouses against stock and CENVAT balances against capital goods/service tax, etc. KIIL has also provided the statutory auditor's certificate from B. Mukherjee & Co. certifying that *"CENVAT Balances amounting to Rs.8,62,71,792.46 relating to various Warehouses of Kkalpana Industries (India) Ltd. having its Registered Office at 2B, Pretoria Street, Kolkata-700071, for the FY 2015-16 as per Annexure-E (A) have been verified and matched with the Books of Accounts maintained by the Company, further, CENVAT Balances amounting to Rs.2,81,18,216.10 relating to Manufacturing Units of the Company as per Annexure-E (B), which do not form part of Excise Return for the FY 2015-16 and for which CENVAT Credit is yet to be taken have also been checked and verified by us"*.

SEBI asked KIIL about tax filing by the company w.r.t. the CENVAT credit mentioned in Annexure E (A) and E (B) of letter dated February 20, 2018, KIIL vide letter dated April 28, 2018 stated that *"since there is no scope in the prescribed statutory return to reflect such details, hence, we have submitted statement certified by Statutory Auditors of the Company"*.

SEBI observed that KIL has duly furnished the statutory auditor's certificate certifying the CENVAT balances lying at warehouse stock is Rs.8.62 crore and CENVAT balances against capital goods/service tax etc Rs.2.81 crore.

- With respect to the prepaid expense for insurance premium of Rs. 1.02 crore as on March 31, 2016 KIIL submitted that out of total insurance of Rs 1.02 crores, insurance amount of Rs 97.93 lakh was debited from company's HDFC bank account bearing account number as 00140310006071.

It is noted that SEBI had independently verified with HDFC Bank and found that KIIL made the payment of Rs 97.93 lakh to United India Insurance Company on April 2, 2016.

(e) Upon perusal of bank statements submitted by the company vide its reply dated September 18, 2017, SEBI noticed that there are few bank accounts in cash and cash equivalents having account name as Bavaria Poly Private Limited (BPPL). In view of it, SEBI vide email dated November 09, 2017, sought clarification from KIIL with respect to how BPPL is related to KIIL. KIIL vide reply dated November 11, 2017 clarified that in the year 2011, a scheme of amalgamation was proposed by and between KIIL and BPPL for amalgamation of BPPL with KIIL. Subsequent to such amalgamation, KIIL had approached the Ministry of Commerce & Industry for transfer of the Industrial License in the name of KIIL and in spite of repeated requests and reminders the Industrial License was not transferred in the name of KIIL for several years. KIIL submitted that since the Industrial License was not transferred in the name of KIIL for many years, KIIL was compelled to carry on business at Falta Export Processing Zone in the name of BPPL and therefore KIIL continued to operate the Bank Account in the name of BPPL.

I note that the Hon'ble Calcutta High Court vide company petition no. 275 of 2011 had sanctioned the scheme of amalgamation of BPPL with KIIL. I also note Falta Export Processing Zone vide letter dated December 15, 2017 stated that on February 14, 2017, the Falta Special Economic Zone transferred the Industrial License of BPPL in the name of KIIL. Thus, I note that KIIL has submitted plausible explanation for considering the bank statement of BPPL in cash and cash equivalents of its own financial statements.

(f) During the course of hearing and vide email dated September 14, 2017, SEBI had advised KIIL to submit the bank statements of KIIL showing the balance of Rs. 27.77 crore in its cash & bank balance entry of Balance Sheet of FY 2015-16. KIIL vide its reply dated September 18, 2017 has submitted the bank statements showing closing balance and bank reconciliation statement for current accounts, Exchange Earnings in Foreign Currency (EEFC) and Margin & Guarantee deposits (Letter of credit, buyers credit and bank guarantee limits and bank's confirmation letter). Further, KIIL has also given split up of unpaid dividend account.

In order to verify the authenticity of bank balances and balance of FDs for current account and margin & guarantee deposits as on March 31, 2016, SEBI had sought the bank statement/information from the respective banks for the accounts where KIIL has majority of balances in terms of current accounts and margin & guarantee deposits. It is noted that in these bank account where KIIL has majority of balances, the current account and margin & guarantee deposits were totaling to Rs. 16.56 crores which is more than 50% of the account balances of bank accounts / FD accounts as on March 31, 2016, thus confirming the Company's statement of balances as mentioned in KIIL reply dated September 18, 2017.

22. In view of the substantive documentation and explanations provided by KIIL during the hearing and in its replies in respect of all the queries, I do not find any *prima facie* evidence nor suspicion of misrepresentation of financials/business of the company nor of misuse of books of accounts / funds of the company nor of violation of LODR Regulations.

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 absence of *prima facie* evidence / suspicion of misrepresentation of financials/business by the company, misuse of the books of accounts / funds of the company or violation of LODR Regulations, there is no reasonable ground to further verify the financials of the Company warranting an audit. I am, therefore, of the considered view that the actions envisaged in SEBI's letter dated August 7, 2017 against KIIL are liable to be revoked.

ORDER

24. 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, revoke the actions envisaged in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges against Kkalpana Industries (India) Limited.

25. Accordingly the representation of KIIL is disposed of.

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

27. 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: JULY 31, 2018

PLACE: MUMBAI

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