



भारतीय प्रतिभूति  
और विनियम बोर्ड  
Securities and Exchange  
Board of India

CHIEF GENERAL MANAGER  
INTEGRATED SURVEILLANCE DEPARTMENT

ISD/OW/2700/2017  
February 3, 2017

Milind Soni  
General manager – Finance  
Kirloskar Chillers Private Limited  
Office no 104, 1st Floor, Tower P3,  
Pentagon, Magarpatta City  
Hadapsar, Pune - 411028

Dear Sir,

**Re: Request for Interpretive Letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in connection with the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.**

1. Please refer to your letter dated December 2, 2016 seeking an interpretative letter under the SEBI (Informal Guidance) Scheme, 2003. (hereinafter referred to as the "Scheme").
2. In your letter under reference you have inter alia made the following submissions-
  - i. Kirloskar Chillers Pvt. Ltd. ("KCPL") is a private limited company and Kirloskar Brothers Limited ("KBL") is a public limited company both having their respective registered offices in Pune. KCPL is a part of the promoter group of KBL since KCPL is closely held by certain promoters of KBL. The 'Promoter and Promoter Group' of KBL collectively hold 65.44% of the total paid up capital of the KBL as on September 30, 2016. KCPL currently does not hold any equity shares in KBL.
  - ii. Being public listed company, KBL has issued a "Code of practice and procedures for fair disclosure of unpublished price sensitive information ("UPSI") and code of conduct to regulate monitor and report trading by insiders of KBL" ("CoC") in accordance with Schedule B of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations").
  - iii. KCPL intends to acquire 50,000 equity shares, constituting 0.06% of the paid up capital of KBL ("**Proposed Acquisition**"). Since KCPL qualifies as a promoter group entity of the KBL, as per Regulation 9 of PIT Regulations, it is required to adhere to requirements contained in the CoC. Among other requirements, the CoC stipulates as follows:

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बान्द्रा कुर्ला कॉम्प्लेक्स, बान्द्रा (पूर्व), मुंबई - 400 051.

दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर. एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in



अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

*"All insiders and designated Employee, Auditors, consultants and other advisors who intend to deal in the securities should obtain a pre-clearance of such transactions..."*

*An application may be made in the prescribed form in Annexure I to the Compliance Officer indicating the estimated numbers of securities to be dealt in. All other details as prescribed in the form shall also be provided with an undertaking as prescribed in Annexure II."*

- iv. In terms of CoC, KCPL made an application dated September 6, 2016 in the format prescribed under the CoC seeking pre clearance of the compliance officer of KBL for the proposed acquisition. KCPL had also attached a declaration / undertaking from KCPL that it does not possess any unpublished price sensitive information.
- v. The said application was rejected by the compliance officer, vide his letter dated September 6, 2016, without any valid grounds either under the PIT Regulations or the CoC. Upon request for the grounds of rejection of the application vide letter dated September 7, 2016, vide his letter dated September 12, 2016, the compliance officer attempted to justify the said rejection by stating as follows:
- "In this connection we would like to inform you that your request for purchase of 50,000 (Fifty Thousand) equity shares of KBL on September 6, 2016 was rejected, inter alia, for the reason that there is already approved pre clearance in place for promoters and there is no balance number of shares available for trade."*
- vi. In light of the above background, you (KCPL) through this interpretive letter seek guidance from SEBI on legal provisions relating to requirement of pre clearance from the compliance officer and the grounds on which pre clearance can be rejected by the compliance officer.
3. You have made reference to the following Regulations of PIT Regulations in your letter
- i. Regulation 9(1) of PIT regulations, reproduced as under:

*The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.*





अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
**Securities and Exchange  
Board of India**

- ii. Clause 6 of Schedule B of PIT regulations ("**Schedule B**"), reproduced as under:

*When the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.*

- iii. Additionally, you have made reference to the relevant clauses of CoC as under:

*All Insiders and Designated Employees, Auditors, consultants and other advisors who intend to deal in the securities should obtain pre-clearance of such transactions...*

*An application may be made in the prescribed form in Annexure I to the Compliance Officer indicating the estimated numbers of securities to be dealt in. All other details as prescribed in the form shall also be provided with an undertaking as prescribed in Annexure II*

- iv. As per your submission, the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 provide no prohibition from acquisition of shares by the promoter or other person.
- v. You have also stated that in terms of the provisions of PIT regulations and the CoC, all insiders of KBL are required to obtain a pre clearance for any proposed transaction on securities of KBL by making a request to the Compliance Officer in the prescribed format. The prescribed format requires a mere declaration that the insider does not possess any UPSI.

4. In your letter under reference, you have made further submissions as under:

- i. Since KCPL is promoter group entity of KBL, KCPL had sought pre-clearance from the Compliance Officer to make the proposed acquisition. The pre clearance was sought in the required format wherein KCPL also declared that it is not in possession of any UPSI.
- ii. However, the request of KCPL was rejected by the Compliance Officer on the grounds extraneous to the provisions of PIT regulations. As per your interpretation, the provisions of PIT regulations do not provide the Compliance officer with the powers to deny pre clearance request from insiders on grounds extraneous to the provisions of PIT Regulations.



अनुवर्ती :  
Continuation :

**भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India**

- iii. Further, you have cited 2 SEBI orders (both passed in relation to transactions when the erstwhile SEBI Prohibition of Insider Trading), Regulations, 1992 were in force) to drive home the point that the grounds on which a request for pre-clearance is to be approved or rejected is limited to possession of any UPSI. It is opined by you that a compliance officer is not empowered to make any decision based on subjective criteria or reject an application for pre clearance of a transaction for any grounds other than those pertaining to PIT regulations.
  - iv. Further, as per terms of section 58 of the Companies Act, 2013, which ensures free transferability of shares of public listed companies, it is submitted that it is not open to a public listed company or its compliance Officer to deny transfer of shares on any grounds other than as provided under any statute or regulation.
  - v. In the case at hand, as discussed above, the Compliance Officer initially rejected the application without providing any reasons and only later stated that the reason for rejecting the application was that "there is already pre-clearance in place for the promoters and there is no balance number of shares available for trade." The CoC does not specify any limit on number 'number of shares available for trade' and therefore, 'no balance' of such shares is not a valid ground for rejection either under the CoC or PIT Regulations.
  - vi. Therefore, in view of the applicant (KCPL), the rejection of pre clearance request made by them for the proposed acquisition is in violation of Regulation 9 (1) and clause 6 of Schedule B of PIT Regulations. As per the interpretation of the applicant, a compliance officer of a listed company should exercise its power to grant pre-clearance requests solely based on the provisions of PIT regulations and the CoC. A Compliance Officer has no discretionary power to reject a pre-clearance request based on any random or arbitrary basis which is extraneous to the CoC and the PIT Regulations, particularly when there is no breach of any other law either.
5. In the light of aforesaid submissions, you have sought an interpretive letter on the following questions:
- i. Whether KCPL or any other entity that qualifies as a promoter group entity requires a pre-clearance from KBL merely because it is a promoter, even though it has no role in the management of KBL or have any access whatsoever to UPSI.
  - ii. Under Regulation 9 and Schedule B of the Insider Trading Regulations, whether a compliance officer has the power to reject pre-clearance request for reasons extraneous to the CoC and PIT Regulations?







अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
**Securities and Exchange  
Board of India**

- iii. Whether the compliance officer has discretionary powers under the PIT regulations to reject pre-clearance request on any reason it deems fit, even if legal? Whether a compliance officer can use reasons such as "for the reason that there is already approved Pre-Clearance in place for Promoters and there is no balance number of shares available for trade" whereas the Takeover Code provides no such restriction for promoter acquiring shares.
- iv. What are the factors that the compliance officer is permitted to consider while approving or rejecting an application seeking pre-clearance for a proposed transaction?
- v. Under the above background, whether the Compliance Officer has the power to reject the Application of KCPL based on the grounds stated in his communications, which are extraneous to requirements of CoC and PIT Regulations?
6. Without necessarily agreeing with your analysis given in your above mentioned letter, our views on the issue raised by you are as under-

At the outset it may be pertinent to point out that PIT regulations by nature are prohibitive Regulations and the applicability of its provisions, is with respect to Insiders and such concerned securities to which a UPSI might pertain; so as there is no undue advantage accrued to such class of investors, on account of their access to UPSI; at the expense of other investors or general market participants.

- i. With respect to the query at 5(i), attention may be drawn to clause 6 of Schedule B of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) which states as under-

*"6. When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed."*

As per the above clause, it may be stated that pre-clearance is required to be obtained only by "Designated persons" if the value of the proposed trades is above such thresholds as stipulated by the board of directors. Thus a promoter, if designated as a "designated person" by the board of directors in consultation with the compliance officer, will be required to obtain pre-clearance for trading.

- ii. With respect to query at para 5(ii), 5(iii) and 5(iv), attention may be drawn to Section 9(1) of the PIT Regulations which states that -



अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
**Securities and Exchange  
Board of India**

*“9.(1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.”*

It may be stated that the Code of Conduct framed by the board of directors of every listed company and market intermediary, has to be in line with the standards set out in Schedule B, without diluting the provisions of PIT regulations.

Further, attention is drawn to Regulation 2(1)(c) of the PIT Regulations, which states that *“compliance officer” means any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be;*

Further, it may be stated that Schedule B of the PIT Regulations casts certain obligations on the Compliance Officer which has to be complied accordingly. The compliance officer may approve or reject a pre-clearance request after necessary assessment as per the PIT Regulations and the Code of Conduct.

iii. With respect to query at para 5(v) above, attention may be drawn to Clause 1 of Schedule B of PIT Regulations which states as under-

*“1. The compliance officer shall report to the board of directors and in particular, shall provide reports to the Chairman of the Audit Committee, if any, or to the Chairman of the board of directors at such frequency as may be stipulated by the board of directors.”*

In view of the above provision along with Regulation 2(1)(c) of the PIT Regulations mentioned above, it may be stated that the compliance officer acts under the overall supervision of the board of directors or the audit committee. Any question with respect to the act of compliance officer whether or not extraneous to the powers so conferred according to the PIT Regulations and the Code of Conduct, may be referred to the board of directors and the audit committee for examination in accordance with the extant laws and the relevant facts of the case.

It is reiterated that the basic intent of PIT Regulations is that no undue advantage accrue to certain category of investors on account of their access to UPSI, and it is assumed that in this regard, any actions of Compliance





अनुवर्ती :  
Continuation :

भारतीय प्रतिभूति  
और विनिमय बोर्ड  
**Securities and Exchange  
Board of India**

Officers, Board of Directors or other entities entrusted with ensuring adherence to these Regulations, should be to ensure compliance in letter and spirit to the PIT regulations and not for any ulterior motive.

7. The above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to a different result. Further, this letter does not express a decision of the Board on the question referred.
8. You may also note that the above views are expressed only with respect to the clarification sought in your letter under reference with respect to the PIT Regulations and do not affect the applicability of any other law or requirements of any other SEBI Regulations, Guidelines and Circulars administered by SEBI of the laws administered by any other authority.

Yours faithfully,

**Sunil Kadam**