

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 M/s Eskay K'n'it (India) Limited (PAN: AABCS1363G)

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 Eskay K'n'it (India) Limited (hereinafter referred to as **"EKIL"** / **"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. In the meantime, aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI and BSE, EKIL filed an appeal No. 267 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 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.

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. Further, as per the Hon'ble SAT order dated October 06, 2017 in the matter, SEBI vide communication dated October 06, 2017, granted an opportunity of hearing to EKIL on October 11, 2017. EKIL vide email dated October 10, 2017 requested for adjournment of hearing. Accordingly, SEBI vide communication dated October 11, 2017, granted another opportunity of hearing to EKIL on October 13, 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 M/s Eskay K'n'it (India) Limited (hereinafter referred to as "EKIL" / "Company") and made oral submissions which are as under:

- (a) Entity has been facing financial problems and its reserves and surplus has gone down over the years.*
- (b) Entity had a turnover of Rs. 400 crores in 2015-2016.*
- (c) Equity share capital of the Entity has remained constant.*
- (d) Bank accounts of the Entity stand attached. Job work is allowed to customers who make direct payments to the employees.*

Entity was advised to submit a written representation by Monday, 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 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 of Rs. 11 crores, shown as “Subsidiary Receivable” in the Short Term Loans and Advances, for the financial year 2015-2016.*
 - (h) Clarification with respect to Rs. 12.25 crores and Rs. 7.02 crore, shown as repayment of long term and short term borrowing under the head "Cash Outflows from Financing activities" in the cash flow statement for the financial year 2015-2016, including the details as to who the repayment was made to and bank account statements reflecting how the repayment was made.*
 - (i) Details of non-current investments along with documentary evidence. In case of connected and/or related parties, whether Secretarial Audit for due process has been followed.*
 - (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 EKIL to furnish the aforesaid information by October 30, 2017.

12. Hon'ble SAT vide order dated October 06, 2017, had directed EKIL 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, EKIL had failed to submit the written representation, however, SEBI had advised EKIL to submit a written representation by October 16, 2017. As EKIL failed to submit the written representation by October 16, 2017, SEBI vide email dated October 23, 2017 had advised EKIL to clarify the status of submission of written representation. EKIL vide letter dated October 24, 2017 submitted the written representation to SEBI stating as under:

- (a) EKIL (formerly known as Shree Krishna Petro Yarns 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. 165 crore and its paid up capital is approx Rs. 28.08 crores.
- (b) Company has complied with all regulatory compliances.
- (c) EKIL 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.
- (d) The company's plants are located in Bhilad, Piperia (Gujarat), Bhiwandi Dombivali (Maharashtra). Out of the same, EKIL has leased out few of its plants, owing to ongoing its financial stress and constraints.
- (e) There are approximately 400 employees and/or workers are working with EKIL. Out of same around 27 employees are on the payroll of the company.
- (f) EKIL has revenue from operation as on March 31, 2017 is Rs. 35.55 crores.
- (g) Market capitalization of EKIL is Rs. 7.02 crore having 35,176 shareholders, out of same 57.32% (for approx.. 16,09,72,278 shares) belongs to its promoter and promoter group entities rest 42.68% (for approx. 11,98,59,574 shares) belongs to the public shareholder.

- (h) On an average approximately 1,87,389 number of shares of the company are traded daily as per the data available in BSE's website for the period of January 2017 to August 07, 2017.
- (i) 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 the company's 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 company securities without even providing an opportunity of hearing.
- (j) EKIL vide letter dated August 23, 2017 submitted the auditor certificates along with the necessary documentation to BSE.
- (k) EKIL had voluntary made declaration that, presently the Company is under financial hardship and banks and other financial institutions have declared the accounts of the company as NPA and have initiated necessary proceeding against it. It was further submitted that, as the accounts of the company has been declared as NPA, the banking facility has been stopped and the company so as to continue plant and machinery running, sustain the livelihood its employees/workers and to revive its financial position have started doing odd job works, where it takes raw cotton yarns and process it and give it back to its customer and customer in turn make payments to its workers/employees, statutory and operational cost. EKIL had to enter into such arrangements so to continue to support our employees/workers and continue running our mills.
- (l) EKIL 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.

13. EKIL vide its letter dated October 30, 2017 submitted the information sought by SEBI at the time of hearing and vide email dated October 16, 2017, which are *inter alia* as under:

- (a) *With regard to the para (a) of the email, 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.*
- (b) *With regard to the para (b) of the email, it is submitted that company have plant and machinery at Bhilad-Gujarat, Peperia-Gujarat, Dombivali-Maharashtra and Bhiwandi, Maharashtra. Out of the same, part of plant and machinery are leased to third parties and in few location the same are being run by the company.*
- (c) *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 utilized the same will lose its value and may turn into scrap value*
- (d) *With regard to point (c) of the email, it is stated that, Asahi Industries Limited is paying the Direct/ Indirect Expenses of the Company.*
- (e) *With regard to point (d) of the email, it is stated that on FY 2015-16 the company has not entered any related party transactions.*
- (f) *With regard to the point (e) of the email, 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 attached.*
- (g) *With regard to the point (f) of the email, the details of the debtors for FY 2015-16 is annexed.*
- (h) *With regard to the point (g) of the email it is 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 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 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.11.89 Cr. Accordingly, a provision of Rs.11.89 Cr. has been shown in the Balance sheets.

- (i) With regard to the point (h) of the email, it is most humbly submitted that, we are collating necessary details and same will be provided at the earliest.*
- (j) With regard to the point (i) of the email, it is submitted that the company has made investment in both quoted and unquoted shares the detail pertaining to the same are provided, are duly captured in the balance sheet of FY 2015-16. It is submitted that, in relation to the unquoted investment, it is stated that, the Company had invested in unlisted public limited company and we crave leave to submit the share certificate of those unlisted public company where the company has made investment, in due course.*
- (k) With regard to the point (j) of the email, 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.*
- (l) With regard to point (k) of the email, it is submitted that, presently there are no 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-Ahmadabad.*

14. It is observed that, EKIL vide letter dated October 30, 2017 had furnished incomplete information. EKIL also failed to furnish the complete supporting documents regarding the information sought at the time of hearing as well as through email dated October 16, 2017. Therefore, SEBI vide email dated November 02, 2017 had advised EKIL to submit the following information by November 04, 2017:

- (a) With respect to Point 1(b) of the company's reply, you are requested to provide the copy of agreements entered with third parties for leasing company's plant and machinery;*

- (b) *With respect to Point 1(d) of the company's reply, you are requested to provide copy of contracts/agreements entered with M/s. Asahi industries Ltd;*
- (c) *With respect to Point 1(f) and Annexure 1 of the company's reply, you are requested to provide copy of contracts/agreements pertaining to loans and advances and agreements/contracts/invoices against which the amount is receivable pertaining to sundry debtors (FS) along with any other supporting document relating to the Sundry Debtors. Also explain the inclusion of Sundry Debtors in the Loans and Advances. Further, kindly explain the meaning of terminology (FS) mentioned in the heading of debtors i.e. Sundry Debtors (FS).*
- (d) *With respect to Point 1(g) of the company's reply, you are requested to provide copy of contracts/agreements/invoices against which the amount is receivable pertaining to debtors of the company also any other supporting document relating to the debtors as provided in the Annexure 2 of the reply;*
- (e) *With respect to Point 1(i) of the company's reply,*
- *Details with respect to point (h) of the SEBI email dated October 16, 2017: "Clarification with respect to Rs. 12.25 crores and Rs. 7.02 crore, shown as repayment of long term and short term borrowing under the head "Cash Outflows from Financing activities" in the cash flow statement for the financial year 2015-2016, including the details as to who the repayment was made to and bank account statements reflecting how the repayment was made.*
 - *Details with respect to point (i) of the SEBI email dated October 16, 2017: "Details of non-current investments along with documentary evidence. In case of connected and/or related parties, whether Secretarial Audit for due process has been followed.*
is pending to be received from the company.
- (f) *With respect to Point 1(k) of the company's reply, details of investigation pending before CBI BS&FC, Mumbai on the complaint made by UCO Bank against the company and Directors of the company (Kindly mention the nature of the complaint made by UCO and other details in the matter).*

(g) With respect to Point 1(l) of the company's reply, details of the matter filed by Bank of India before DRT u/s 19 of RDDB Act.

(h) With respect to point 1(h) of the company's reply, kindly provide the supporting documents showing calculation of subsidy receivable amount of Rs. 11.89 crore and also supporting documents of the term loan and other documents showing that the company is eligible for the subsidy, the benchmark production and that the company has surpassed the benchmark production.

Further, it may be reiterated that the company was requested to provide all the information mentioned in the SEBI mail dated October 16, 2017 for the FY 2015-16 and FY 2016-17 along with all the supporting documents. However, the reply of the company dated October 30, 2017 consists of information only for the year 2015-16 and no supporting documents.

15. EKIL vide email dated November 03, 2017 had requested 2-3 days' time to submit the information sought by SEBI vide email dated November 02, 2017. SEBI vide email dated November 03, 2017 advised EKIL to furnish the said information by November 06, 2017 and considering the Hon'ble SAT deadline in the matter no further extension request would be granted. EKIL vide letter dated November 07, 2017 had once again requested additional 5-6 days' time to submit all the documents/information. SEBI once again vide email dated November 09, 2017 advised EKIL to furnish the said information by November 10, 2017 and considering the Hon'ble SAT deadline in the matter no further extension request would be granted. Till date EKIL had not submitted aforesaid required information.

16. Further, SEBI vide email dated November 15, 2017 had requested EKIL to furnish the CIN (Company Identity Number) of Sundry Debtors (FS) namely Bridge Infra Pvt. Ltd., Dhruvi Trading Pvt. Ltd., Kaushal Logistics Pvt. Ltd. and Madhu Crimpers Pvt. Ltd. EKIL vide email dated November 20, 2017 furnished the CIN of said 4 entities.

17. SEBI vide communication dated November 21, 2017 has forwarded the copy of MCA letter dated June 09, 2017 to EKIL.

18. Pursuant to SEBI's letter dated August 9, 2017, BSE submitted its report dated October 09, 2017 stating that, Company has submitted the auditor certificate from A.F. Khasgiwala & Company, Chartered Accountants. As per the Auditor Certificate, Company had filed annual income tax returns for the last 3 years, Company had complied with Companies Act and SEBI (LODR) Regulations and Company is a going concern and is engaged in the business of textile industries and manufacturing of yarn. The company has made default to bank amounting to Rs. 299.32 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:

19. Before moving forward, it is pertinent to deal with the issue raised by EKIL that it had not received the copy of MCA letter dated June 09, 2017. I note that SEBI vide communication dated November 21, 2017 has forwarded the copy of MCA letter dated June 09, 2017 to EKIL. I also 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.

20. 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.

21. 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.*

22. 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 EKIL 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. EKIL vide its reply dated October 30, 2017 has stated investigation is pending before CBI BS & FC, Mumbai on the complaint of UCO Bank against the company and Directors of the Company. EKIL 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. However, EKIL has not submitted the said details till date. Further, SEBI vide email dated November 16, 2017

had requested to BSE to confirm whether EKIL 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 EKIL. Thus, this prima facie appears to be material information and as per regulation 30 of LODR Regulations, EKIL 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 EKIL had violated regulation 30 of LODR Regulations.

- (b) During the course of hearing dated October 13, 2017 and SEBI vide email dated October 16, 2017 had advised EKIL 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 15-16 and 16-17. EKIL 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, EKIL did not submit the agreement/contract entered with M/s. Asahi Industries Ltd. for such arrangement. It is observed that AIL is a company listed on BSE and AIL is promoted by 'Jaybharat Textiles & Real Estate Limited' (JTREL). JTREL and EKIL have two common directors namely 'Manasi Indrajit Wadkar' and 'Neha Nilesh Patil'. Thus, AIL and EKIL are connected parties and in the absence of agreement/contract between them, a question is raised whether minority shareholder interest has been compromised or not.

Further, EKIL to the query of BSE regarding Direct Expenses, had stated that "*The Company meets its Direct Expenses like Power & Fuel, Labour Charges, Repairs & Maintenance directly through its Customers to whom it supplies the Finished Goods. So all these Direct Expenses are paid by our Customers.*" This implies that AIL is the party to whom all the finished goods are supplied. EKIL in its representation dated October 24, 2017 submitted to SEBI mentioned that the revenue of the company for FY 2016-17 is Rs. 35.55 crores and the major clients of EKIL are Avon Realcon Pvt. Ltd. (Rs. 19.88 crores) and Bodal Conpro Pvt. Ltd. (Rs. 15.39 crores). Asahi Industries Ltd. is not appearing as part of major clients contributing to the revenues. Hence, 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) During the course of hearing dated October 13, 2017 and SEBI vide email dated October 16, 2017 had advised EKIL to clarify and provide the details of Rs. 11 crores, shown as “Subsidiary Receivable” in the Short Term Loans and Advances, for the financial year 2015-2016. EKIL vide its reply dated October 30, 2017 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. EKIL 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.11.89 Cr. Accordingly, a provision of Rs.11.89 Cr. has been shown in the Balance sheets.

It is observed that, from the preliminary reading of the TUFs, as per Ministry of Textiles Resolution No. 6/19/2013-TUFs dated Oct 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.*" However, EKIL in its representation dated October 24, 2017 stated that account of EKIL has been declared as NPA in 2013 and as per the list of the banks the company has defaulted in its loan to 6 banks including Dena Bank. Thus, EKIL was not in a position to pay any interest on the term loan as required under the resolution passed by Ministry of Textiles. Further, EKIL did not submit the documents showing calculation of subsidy receivable amount of Rs. 11.89 cr., documents pertaining to the term loan, other documents showing that the company is eligible for the subsidy & the benchmark production. Thus, prima facie it appears that the claim of the company that it is eligible for the subsidy and

that Dena Bank has not claimed the subsidy, seems to be incorrect. This prima facie raises a suspicion on the genuineness of the amount shown as subsidy receivable and misrepresentation of financials to the extent of Rs. 11.89 crores.

- (d) During the course of hearing dated October 13, 2017 and SEBI vide email dated October 16, 2017 had advised EKIL 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. Further, it has been informed to EKIL to consider 'Related Party' to include party 'Connected to Promoters'. EKIL vide letter dated October 30, 2017 had submitted only break-up of Short term Loans and advances, however EKIL 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. EKIL also stated that company has not entered any related party transactions.

Upon preliminary analysis, it is observed that, Sundry Debtors (FS) of Rs. 26.64 crore receivable from 4 entities, is included in Short Term Loans and Advances. SEBI vide email dated November 02, 2017 had asked EKIL to clarify the inclusion of these Sundry Debtors in Short Term Loans and Advances rather than Trade Receivable. However, EKIL had not submitted any reply for the same. Further, out of the 4 entities, for an entity named "Dhruvi Trading Pvt. Ltd." from whom EKIL has shown Rs. 7.5 crore as receivable (sundry debtor), no records of a company by name "Dhruvi Trading Pvt. Ltd." was available on MCA website. SEBI vide email dated November 15, 2017 had advised EKIL to submit the CIN of Dhruvi Trading Pvt. Ltd. EKIL vide email dated November 20, 2017 submit the CIN of Dhruvi Trading Pvt. Ltd which is U45202MH2009PTC194959. As per MCA website that CIN provided by EKIL vide email dated November 20, 2017 for "Dhruvi Trading Pvt. Ltd.", is the CIN of "Dhruvi Properties Pvt. Ltd". Further, it appears that one of the promoters of EKIL, Akash Fabrics Pvt. Ltd. (11.47%) appears to be connected with Dhruvi Properties Pvt. Ltd. through a common director Mr. Rajendra Nagpal.

Thus, the name of the company from whom amount is receivable as per the Short Term Loans and Advances Break-up provided by EKIL vide letter dated October 30, 2017 is different from the reply received vide email dated November 20, 2017. This prima facie

raises a doubt on the reliability of the reply of EKIL. Further, in the absence of documentary evidence submitted by EKIL, there appears to be suspicion about the genuineness of the amount shown as receivable from the entity.

- (e) Company in its reply mentioned that part of their plant and machinery has been leased out to third parties 'Everlong Trading Pvt. Ltd'. Vide email dated November 02, 2017, company was asked to submit supporting documents in the form of copy of agreements entered with third parties for leasing company's plant and machinery to which company did not reply till date. Further, EKIL had submitted a copy of a report of Court Commissioner as an Annexure to the Auditor Certificate sought by BSE. The court commissioner has visited two properties (mills and Plant and machinery) of EKIL in Maharashtra and Gujarat, and as per the report it is mentioned that these are let out to 'Everlong Trading Pvt. Ltd.', however, no prior permission as desired by the consortium of banks was taken by EKIL as the property is hypothecated with the banks. Hence, the leasing of assets is not agreeable with the banks. This prima facie raises a doubt on the validity of the lease of the mills.
- (f) It is also observed that EKIL had failed to submit the supporting documents as well as documentary evidence with respect to following information even after giving sufficient extension of time:
- (i) EKIL had failed to submit the contract and agreements with customers engaged with the company.
 - (ii) EKIL 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) EKIL had not submitted any details pertaining to Trade Receivables except for the break-up for the year 2015-16.
 - (iv) EKIL has not submitted any details pertaining to repayment of Long term and Short term borrowing.

- (v) With respect to Non-current investments, EKIL has failed submitted any supporting documents for the Rs. 24.49 crore. Further, in the reply dated October 30, 2017, EKIL had stated that the Share Certificate w.r.t. Unquoted Investments of Rs. 10 crore approx. would be provided in due course. However, the same is not provided till date. From the preliminary analysis of non-current investments, it is observed that out of Rs. 24.49 crore of total Non-Current Investments, Rs. 23.98 crore investments is made in two companies which are prima facie related to EKIL through common directors, thus, a question is raised whether minority shareholder interest has been compromised or not.
- (g) The failure to provide the backup documents/documentary evidence and relevant details, despite the fact that the Company was given several opportunities, leads to the *prima facie* conclusion that the company has made misrepresentation of the figures as to the trade receivables, long term and short term borrowings, non-current investments, short term loans and advances and subsidy receivables mentioned in the annual report of EKIL and raises suspicion of misuse of funds.
- (h) 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 EKIL at the time of hearing and also vide its email dated October 16, 2017 and November 02, 2017 (mentioned above). However, EKIL in non-compliance of its obligation to provide information, till date, despite numerous reminders, has failed to submit the complete information sought from it.

23. From the above I note the followings:

- (a) As per regulation 30 of LODR Regulation, EKIL was required to disclose material information to stock exchanges. The information pertaining to the investigation being carried out by CBI BS & FC, 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 EKIL had failed to do.
- (b) Company has failed to submit sufficient documents to substantiate the figures disclosed in the financials (trade receivables, long term and short term borrowings, non-current investments, short term loans and advances and subsidy receivables) of the company and to establish their genuineness. 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* evidence of misrepresentation of business and financials by the company and a strong suspicion regarding the misuse of books of accounts/funds by the company.
- (c) Failure to provide the copy of contracts/agreements with customers engaged with company, copy of lease agreement of plants and machinery with third parties, copy of agreement/contract with Asahi Industries Limited, copy of agreements/contracts for providing short term loans and advances, copy of agreements/contracts/ invoices against which amount is receivable from debtors of the company and Copy of share certificates of non-current investments leads to the *prima facie* suspicion about the genuineness of such arrangement/transaction.

24. 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 and submission of partial & incomplete information to SEBI. 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.*

25. In view of the *prima facie* evidence on the misrepresentation of financials by the company as well as suspicion of misuse of funds/ books of accounts of the company and submission of partial & incomplete information to SEBI, 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.
26. 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 and possible compromise of minority shareholder interest.
27. Further, pending enquiry/ audit, considering the interest of public shareholders involved in EKIL, I find it is appropriate to revert the trading in the securities of EKIL to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
28. 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

29. 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 29(iv) of this order, the actions envisaged

in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges, against M/s Eskay K'n'it (India) Limited as under:

- i. The trading in securities of EKIL 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 *interalia* to further verify:
 - a. Misrepresentation including of financials and/or business by EKIL, if any;
 - b. Misuse of the books of accounts / funds including facilitation of accommodation entries or compromise of minority shareholder interest, if any.
- iii. The promoters and directors in EKIL are permitted only to buy the securities of EKIL. The shares held by the promoters and directors in EKIL shall not be allowed to be transferred for sale, by depositories.
- iv. The other actions envisaged in SEBI's letter dated August 07, 2017 in para 1 (d), as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against M/s Eskay K'n'it (India) Limited.

30. The '*directors*' for the purpose of direction mentioned at para 29(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.

31. Accordingly the representation of M/s Eskay K'n'it (India) Limited is disposed of.

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

33. The prima facie observations contained in this Order are made on the basis of the prima facie material available on record. In this context, M/s Eskay K'n'it (India) 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 M/s Eskay K'n'it (India) 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 29 above shall stand confirmed automatically, without any further orders.
34. Copy of this Order shall be forwarded to the recognised stock exchanges & depositories for information and necessary action.
35. 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**