

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: ANANTA BARUA, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Kailash Auto Finance Ltd.

In respect of:

Sr. No.	Noticee(s)	PAN
1.	Eversafe Promoters Private Limited	AACCE8491Q
2.	Bholebaba Suppliers Private Limited	AADCB8132G
3.	Subhankar Exim Private Limited	AAQCS4922A
4.	Sarvottam Advisory Private Limited	AAMCS7291N
5.	Overall Vincom Private Limited	AABCO1200E
6.	Akriti Advisory Services Private Limited (now known as Jagruti Infra Developers Private Limited)	AAICA9057G
7.	Supernova Advertising Private Limited	AAMCS0163K

The aforesaid entities are hereinafter referred to by their respective names/ serial numbers or collectively as "the Noticees".

BACKGROUND:

1. Kailash Auto Finance Limited (hereinafter referred to as "**KAFL**"/ "**the company**") was incorporated in the name of Shivam Commercial Services Limited on November 14, 1984. Subsequently, w.e.f. April 8, 1992, the name of the company was changed to Kailash Auto Finance Ltd. The

company is engaged in providing various types of loans, trade financing, trading in shares and securities etc. The shares of the company are listed on the Bombay Stock Exchange (hereinafter referred to as "**BSE**").

2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI/ Board**") noticed unusual price movement and volume in the scrip price of KAFL during the period from November 07, 2014 to December 31, 2015 when price of the scrip fell from Rs. 28.05/- per share to a low of Rs. 2.01/- per share and daily average trading volume in the scrip was 7 lakh shares. Prior to this period, during July 22, 2013 to November 05, 2014, the price of the scrip ranged between Rs. 36.85/- and Rs. 28.45/-, with daily average trading volume of 15 lakh shares with daily average number of trades of 685. It was further observed that earlier, during January 17, 2013 to June 04, 2013, the price of the scrip had increased from Rs. 11/- to Rs. 36.25/ in 36 trading days and average trading volume during this period was merely 280 shares per day with average number of trade as low as 3 per day.
3. After conducting a preliminary examination in the dealings in the scrip of KAFL, pending investigation, SEBI passed an *ad interim ex-parte* order dated March 29, 2016 (hereinafter referred to as "**interim order**") restraining *inter alia* noticee no. 2 and noticee no. 5 herein from accessing the securities market and buying, selling or dealing in securities, in any manner whatsoever, till further directions. The interim order was, subsequently, confirmed vide confirmatory orders.
4. A detailed investigation was carried out to enquire into the possible violation of securities laws in respect of dealing in the scrip of KAFL for the period of January 17, 2013 to December 31, 2015 (**'investigation period'**). From the last traded price ("**LTP**") analysis of trades carried out by the Noticees in the scrip of KAFL during the Investigation Period, it was noted that the Noticees had created a misleading appearance of trading in the scrip and manipulated the scrip price.

5. It is also noted that in between SEBI had also received a letter from the Income Tax Department stating that certain entities had generated bogus long term capital gain (LTCG), through stock exchange mechanism, in various scrip including the scrip of KAFL.

SHOW CAUSE NOTICE, REPLY AND HEARING :

6. The investigation revealed that the Notice no. 2 and Noticee No. 5 along with other five entities (Noticee Nos. 1, 3, 4, 6 and 7) were indulged in establishing higher price than the last traded price of the scrip and thereby contributed to increase in the scrip price. Based on the findings recorded in the investigation, a Show Cause Notice (hereinafter referred to as "**SCN**") dated December 04, 2017 was issued to the Noticees asking them to show cause as to why suitable directions under Section 11B, 11(1) and 11(4) of the SEBI Act, 1992 should not be issued against them. The copies of those documents which were relied upon in the SCN including the transaction statements from the depositories (NSDL/CDSL), were enclosed along with the SCN and provided to the Noticees.
7. The findings of the investigation and the allegations levelled against the Noticees, as detailed in the SCN, are summarised as under:

- a. Based upon the price movements of the scrip of KAFL during the investigation period, following three patches were identified:

Period	Patch	No. of trading days	Open		High		Low		Close		Volume	
			Price (Rs.)	Vol	Price (Rs.)	Vol	Price (Rs.)	Vol	Price (Rs.)	Vol	Total Vol	Avg Vol
17/01/2013 to 04/06/2013 (Price rise)	1	36	11	100	44.55	21500	11	20	36.25	300	56292	1563
05/06/2013 to 21/07/2013	-		No trading									
22/07/2013 to 05/11/2014 (Price fall)	2	316	37	1738900	48	4049100	15.8	64423	28.45	1709611	493499408	1561706
06/11/2014 to 31/12/2015 (Price fall)	3	286	28.5	2786950	29.4	3638914	1.66	386	2.01	469614	205903652	719942

- b. It was noted that the price of the scrip increased in Patch - 1 whereas price fall was noted in Patch - 2 and Patch - 3. During the period of Patch – 1 (January 17, 2013 to June 04, 2013), the price of the scrip

opened at Rs.11 on January 17, 2013, lowest during Patch - 1, reached a high of Rs.44.55 on May 24, 2013 and closed at Rs.36.25 on June 04, 2013 in 36 trading days. During this patch, a total of 56,292 shares were traded in 36 days with an average volume of 1,563 shares.

- c. On further analysis of the trades carried out during Patch – 1, it was observed that 19 trades carried out by the seven entities (the Noticees), on the sell side, contributed Rs.22.77 (i.e. 59.37% to market positive LTP).
- d. It was noted that in 17 trades, out of 19 trades, the Noticees were placing sell orders in quantities lesser than the available quantities with them despite the buy orders were available for large quantities. All these seventeen trades were carried out on seventeen different days and noted to be first trades of the day.
- e. The SCN also provided a table containing the details of said seventeen trades in the scrip of KAFL during the Patch -1 of the investigation period including the sell order volume, buy order volume, LTP Contribution, number of shares held by the Noticees before and after the alleged trades which are as follows:

SR. NO.	DATE OF TRANSACTION	SELLER NAME	SELL ORDER NO.	SELL ORDER VOLUME	BUY ORDER VOLUME	LTP CONTRIBUT. (Rs.)	LTP CONT. (% TO MARKET POSITIVE LTP)	NO. OF SHARES HELD BEFORE TRADE	BAL. NO. OF SHARES HELD AFTER TRADE
1	18/03/2013	Eversafe Promoters Pvt. Ltd. (Noticee 1)	16000099171826	100	1100	0.73	1.90	600	500
2	25/03/2013		13000105082499	100	1000	0.93	2.43	400	300
3	28/03/2013		15000071413859	100	500	1.03	2.69	300	200
4	21/05/2013		17000031001881	40	5000	1.8	4.69	200	0*
		Total		340	7600	4.49	11.71		
5	14/03/2013	Bholebaba Suppliers Pvt. Ltd. (Noticee 2)	22000111103560	100	1000	0.66	1.72	800	700
6	19/03/2013		23000063123897	100	300	0.77	2.01	700	600
7	01/04/2013		19000128122642	100	2000	1.05	2.74	600	500
8	15/05/2013		14000021004120	100	500	1.5	3.91	500	400
9	17/05/2013		19000037002826	100	301	1.65	4.30	400	300
		Total		500	4101	5.63	14.68		

SR. NO.	DATE OF TRANSACTION	SELLER NAME	SELL ORDER NO.	SELL ORDER VOLUME	BUY ORDER VOLUME	LTP CONT. (Rs.)	LTP CONT. (% TO MARKET POSITIVE LTP)	NO. OF SHARES HELD BEFORE TRADE	BAL. NO. OF SHARES HELD AFTER TRADE
10	15/03/2013	Subhankar Exim Pvt. Ltd. (Noticee 3)	23000064212778	100	2000	0.7	1.83	1200	700*
11	26/03/2013		12000113461066	100	500	0.98	2.56	700	600
12	20/05/2013		21000028004152	30	5000	1.75	4.56	600	400*
13	22/05/2013		14000021002163	40	5000	1.9	4.95	400	300*
		Total		270	12500	5.33	13.90		
14	23/05/2013	Sarvottam Advisory Pvt. Ltd. (Noticee 4)	13000116004548	2300	5000	2	5.22	5000	2700
		Total		2300	5000	2	5.22		
15	21/03/2013	Overall Vincom Pvt. Ltd. (Noticee 5)	23000097097420	100	600	0.85	2.22	800	700
		Total		100	600	0.85	2.22		
16	14/05/2013	Akriti Advisory Services Pvt. Ltd. (Noticee 6)	11000086003449	30	500	1.4	3.65	6700	6400*
		Total		30	500	1.4	3.65		
17	16/05/2013	Supernova Advertising Pvt. Ltd. (Noticee 7)	12000027000758	20	500	1.55	4.04	5000	4801*
		Total		20	500	1.55	4.04		
		Total of seven connected entities		3560	30801	21.25	55.41		

* The entity executed multiple trades on that day but the trades which contributed to positive LTP have been brought out in the table above.

- f. It was noted that the Noticees matched the price of prevailing buy orders, which were placed at a higher price than the last traded price, and thereby contributed to the increased scrip price with each of their trades. The seventeen trades contributed in raising the scrip price by Rs.21.25 (i.e. 55.41% to market positive LTP).
- g. The Noticees matched the above LTP buy orders by offering small quantity of shares as sale trades, i.e., they released limited number of shares and matched the buy orders which were above LTP with sale orders with volumes in small quantities.

- h. The SCN alleged that the Noticees were not acting as genuine seller because in-spite of sufficient buy orders being available in the market, they released very small quantity of shares in each transaction which were above LTP and performed not more than one transaction in a day.
 - i. In view of the above, the SCN alleged that the Noticees contributed to manipulation in the scrip price and created misleading appearance of trading and, thereby, violated the provisions of Sections 12A(a), (b) & (c) of the SEBI Act, 1992 read with Regulations 3(a),(b),(c),(d) and Regulations 4(1), 4(2)(a) & 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").
- 8.** I note that the said SCN was sent to the Noticees at their addresses available on record and also on the alternate address found through other sources. The SCN issued to all the Noticees returned undelivered and, therefore, attempts were made to serve the same by way of affixture at the last known address. Service of SCN was completed against the Noticee No. 2, 4, 6 and 7 by affixing the same at their address on December 28, 2017. In respect of Noticee Nos. 1, 3 and 5, the service of SCN could not be completed by way of affixture and, therefore, efforts were taken for making newspaper publication in Kolkata edition of Times of India (English daily), Sanmarg (Hindi daily) and Anand Bazar Patrika (vernacular newspaper) on February 02, 2018. It is noted that in respect of Noticee No. 2, in addition to affixture carried out on its address situated in Mumbai, newspaper publication was also made for its address situated in Kolkata, on February 02, 2018 along with the Noticee Nos. 1, 3 and 5.
- 9.** It is noted that none of the Noticees has filed any reply in respect of the allegations made in the SCN. I note that the Noticees were specifically asked to reply to the SCN within twenty one days from the date of receipt of the SCN. It was also mentioned in the SCN that if the Noticees fail to provide any reply then it shall be construed that they have no reply to

submit and, in that case, SEBI shall proceed to take action in terms of the SEBI Act, 1992 and in accordance with law.

10. In compliance with the principles of natural justice, the Noticees were provided an opportunity of personal hearing and for that purpose the matter was fixed for hearing on September 17, 2018 (for Noticee Nos. 1 and 4) and October 19, 2018 (for Noticee Nos. 2, 3, 5, 6 and 7). I note that the hearing notice was served upon Noticee no. 1 (Eversafe Promoters Private Limited) by making newspaper publication in Kolkata edition of Sanmarg (Hindi daily) and Anand Bazar Patrika (vernacular newspaper) on July 25, 2018, and upon the Noticee No. 4 (Sarvottam Advisory Private Limited), by way of affixture carried out on its address on July 06, 2018. Further, the hearing notice in respect of the Noticee Nos. 2, 3 and 5 was served by making newspaper publication in Kolkata edition of Times of India (English daily) and Anand Bazar Patrika (vernacular newspaper) on October 06, 2018. Further, for the Noticee Nos. 2, 6 and 7, the hearing notice was served by making newspaper publication in Mumbai edition of Times of India (English daily) and Maharashtra Times (vernacular newspaper) on October 06, 2018. It is noted that the Noticee No. 2 has its address in Mumbai as well as in Kolkata and, therefore, newspaper publication has been given at both of the places. However, neither of the Noticees appeared before me on the scheduled date of hearing.

11. I note that the best possible efforts have been taken to serve the SCN and the hearing notice upon the Noticees, however, the Noticee have failed to avail the opportunity of personal hearing and also did not file any reply to SCN. It is noted that the Noticees were provided with ample opportunity as per the Principles of Natural Justice and hence, I am proceeding with the matter taking into account the material available on record. The SCN clearly mentioned that in case of failure to submit reply the case would be proceeded with ex-parte on the basis of the material available on record. Despite such clear advice and service of notices in these proceedings the Noticees have ignored them and deliberately chosen to keep themselves away from the proceedings.

CONSIDERATION OF ISSUE AND FINDINGS:

- 12.** On consideration of SCN, its annexures and other materials available on record, I observe the following:
- a. Preliminary examination and then investigation was conducted by SEBI based upon unusual price movement noticed in the scrip of KAFL on the BSE.
 - b. During Patch -1 (from January 17, 2013 to June 04, 2013) of the investigation period (January 17, 2013 to December 31, 2015), price of the KAFL scrip increased from Rs. 11 to Rs. 36. 25 which varied between Rs. 36.85 to Rs. 28.45 during the period of patch-2 (July 22, 2013 to November 05, 2014) and ultimately the scrip price fell down to Rs. 2.01 during Patch- 3 (November 07, 2014 to December 31, 2015) of the investigation period.
 - c. It was noted that the seventeen trades executed by the Noticees during patch – 1 of the investigation period contributed in raising the price of the KAFL scrip by Rs. 21.25 i.e. 55.41% of the market LTP. It was also noted that the Noticees were placing the sell orders, matching the buy order price, for lesser quantities comparing the existing buy orders available on the trading platform of BSE and also compared to their holding of KAFL shares at the time of placing those sell orders. Further, the sell orders were being placed by the Noticees matching the existing buy order price. The details of those seventeen trades are reproduced in para 7(e) on pre-pages.
 - d. It is noted from the table produced in above para 7(e) that the Noticee No.1 executed four sell orders on different dates wherein three sell orders were placed for 100 shares each and the fourth order was placed for 40 shares, when at the same time, the existing buy orders

were available for 1100, 1000, 500 and 5000 shares, respectively. Further, the Noticee No. 1 was holding 600, 400, 300 and 200 shares of KAFL, respectively, at the time of placing those four sell orders. The same is reflected in the following table giving details of the sell orders executed by the Noticee No. 1 (Eversafe Promoters Pvt. Ltd.):

Trade details of Noticee No. 1 (Eversafe Promoters Pvt. Ltd.)						
DATE OF TRANSACTION	SELL ORDER NO.	SELL ORDER VOLUME	BUY ORDER VOLUME	LTP CONT. (Rs.)	LTP CONT. (% TO MARKET POSITIVE LTP)	NO. OF SHARES HELD BEFORE TRADE
18/03/2013	16000099171826	100	1100	0.73	1.90	600
25/03/2013	13000105082499	100	1000	0.93	2.43	400
28/03/2013	15000071413859	100	500	1.03	2.69	300
21/05/2013	17000031001881	40	5000	1.8	4.69	200
Total		340	7600	4.49	11.71	

- e. The Noticee No. 2 executed five sell orders on different dates and sell orders were placed for 100 shares each time even when the existing buy orders were available for 1000 shares, 300 shares, 2000 shares, 500 shares and 301 shares, respectively. Further, the Noticee No. 2 was having higher holdings like 800, 700, 600, 500 and 400 shares of KAFL, respectively, at the time of placing those five sell orders. The same is reflected in the following table giving details of the sell orders executed by the Noticee No. 2 (Bholebaba Suppliers Pvt. Ltd.):

Trade details of Noticee No. 2 (Bholebaba Suppliers Pvt. Ltd.)						
DATE OF TRANSACTION	SELL ORDER NO.	SELL ORDER VOLUME	BUY ORDER VOLUME	LTP CONT. (Rs.)	LTP CONT. (% TO MARKET POSITIVE LTP)	NO. OF SHARES HELD BEFORE TRADE
14/03/2013	22000111103560	100	1000	0.66	1.72	800
19/03/2013	23000063123897	100	300	0.77	2.01	700
01/04/2013	19000128122642	100	2000	1.05	2.74	600
15/05/2013	14000021004120	100	500	1.5	3.91	500
17/05/2013	19000037002826	100	301	1.65	4.30	400

Total	500	4101	5.63	14.68	
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- f. The Noticee No. 3 executed four sell orders on different dates and sell orders were placed for 100 shares two times and 30 shares and 40 shares, respectively, for third and fourth time even when the existing buy orders were available for 2000 shares, 500 shares and 5000 shares for last two sell orders were placed. Further, the Noticee No. 3 was having higher holdings like 1200, 700, 600 and 400 shares of KAFL, respectively, at the time of placing those four sell orders. The same is reflected in the following table giving details of the sell orders executed by the Noticee No. 3 (Subhankar Exim Pvt. Ltd.):

Trade details of Noticee No. 3 (Subhankar Exim Pvt. Ltd.)						
DATE OF TRANSACTION	SELL ORDER NO.	SELL ORDER VOLUME	BUY ORDER VOLUME	LTP CONT. (Rs.)	LTP CONT. (% TO MARKET POSITIVE LTP)	NO. OF SHARES HELD BEFORE TRADE
15/03/2013	23000064212778	100	2000	0.7	1.83	1200
26/03/2013	12000113461066	100	500	0.98	2.56	700
20/05/2013	21000028004152	30	5000	1.75	4.56	600
22/05/2013	14000021002163	40	5000	1.9	4.95	400
Total		270	12500	5.33	13.90	

- g. The Noticee Nos. 4, 5, 6 and 7 executed one sell order each on different dates during Patch – 1 of the investigation period and the sell orders were placed for 2300 shares, 100 shares, 30 shares and 20 shares, respectively, when the existing buy orders were available for 5000 shares, 600 shares, 500 shares and 500 shares, respectively. Further, the Noticee Nos. 4, 5, 6 and 7 were having higher holdings like 5000, 800, 6700 and 5000 shares of KAFL, respectively, at the time of placing those sell orders. The same is reflected in the following table giving details of the sell orders executed by the Noticee Nos. 4, 5, 6 and 7:

Noticee No.	DATE OF TRANSACTION	SELL ORDER NO.	SELL ORDER VOLUME	BUY ORDER VOLUME	LTP CONT. (Rs.)	LTP CONT. (% TO MARKET POSITIVE LTP)	NO. OF SHARES HELD BEFORE TRADE
Noticee No. 4	23/05/2013	13000116004548	2300	5000	2	5.22	5000
Noticee No. 5	21/03/2013	23000097097420	100	600	0.85	2.22	800
Noticee No. 6	14/05/2013	11000086003449	30	500	1.4	3.65	6700
Noticee No. 7	16/05/2013	12000027000758	20	500	1.55	4.04	5000

13. The question now arises as to whether the execution of sell orders by the Noticees in above manner during the investigation period amount to manipulation in the price of KAFL scrip and are in violation of the provisions of the SEBI Act, 1992 and the PFUTP Regulations, 2003, which read as under:

SEBI Act, 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

Section 12A: No person shall directly or indirectly

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (d)

PFUTP Regulations, 2003

Regulation 3. Prohibition of certain dealings in securities

“No person shall directly or indirectly

- (a) buy, sell or otherwise deal in the securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*
 - (a) including in an act which creates false or misleading appearance of trading in the securities market*
.....
 - (e) any act or omission amounting to manipulation of the price of a security;*
.....

14. I note that despite the SCN and hearing notices were duly served to the Noticees, as detailed in paras 8 – 10, none of them have filed any reply to the allegations levelled in the SCN and also failed to appear before me during personal hearing granted to them. As such, it may be presumed that the Noticees have no explanation to offer to the SCN. In this respect, it would be relevant to note that the Hon’ble Securities Appellate Tribunal (SAT) in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), *inter alia*, observed as under:

“29. We see no merit in above contentions. As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges Levelled against them in the show cause notices...”

- 15.** Notwithstanding the above, the manner of sale trades executed by the Noticees are analysed for arriving at appropriate conclusion on merits of the case. The proof of fraudulent and manipulative transactions rarely found by direct evidence rather it always depends upon the given circumstances from which inferences are drawn from the factual details, the nature of transactions, conduct of the parties etc. In this respect, it would be relevant to refer to the Order of the Hon’ble Securities Appellate Tribunal (“SAT”) passed in the matter of Ketan Parekh Vs. SEBI (Appeal No. 2 of 2004 decided on 14.07.2006) observing as under:

“.....Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn.”

- 16.** It is alleged in the SCN that the Noticees are connected with KAFL through a web of entities. On close scrutiny of unique client code details obtained from BSE, bank account statements, off market transactions and the details available on MCA 21 portal etc., the followings are noted:

- a. The Noticee No. 1 (Eversafe Promoters Private Limited) has common email id privatecos26@gmail.com with entities like Overflow

Merchandise Pvt. Ltd. (now known as Ecstatic Merchandise Pvt. Ltd.), Sanskriti Vincom Pvt. Ltd. (Pragyan Vincom Pvt. Ltd.), Shivling Mercantile Pvt. Ltd. (Sonnet Mercantile Pvt. Ltd.), MDBP Mercantile Pvt. Ltd.) and Trump Traders Pvt. Ltd. (Ecstatic Traders Pvt. Ltd.). Further, these entities, which are having common email id with the Noticee No. 1, are sharing common address with the KAFL at 16, Indian Exchange Place, 1st Floor, Kolkata, West Bengal, India – 700001.

- b. The Noticee No. 2 (Bholebaba Suppliers Private Limited) has common director; Mr. Samir Manna with entities like Overflow Merchandise Pvt. Ltd. (Ecstatic Merchandise Pvt. Ltd.), Sanskriti Vincom Pvt. Ltd. (Pragyan Vincom Pvt. Ltd.), and MDBP Mercantile Pvt. Ltd.). Further, these entities, which are having common director with the Noticee No. 2, are sharing common address with the KAFL at 16, Indian Exchange Place, 1st Floor, Kolkata, West Bengal, India – 700001.
- c. The Noticee No. 3 (Subhankar Exim Private Limited) has common email id privatecos26@gmail.com with entities like Overflow Merchandise Pvt. Ltd. (now known as Ecstatic Merchandise Pvt. Ltd.), Sanskriti Vincom Pvt. Ltd. (now known as Pragyan Vincom Pvt. Ltd.), Shivling Mercantile Pvt. Ltd. (now known as Sonnet Mercantile Pvt. Ltd.), MDBP Mercantile Pvt. Ltd. and Trump Traders Pvt. Ltd. (now known as Ecstatic Traders Pvt. Ltd.). Further, these entities, which are having common email id with the Noticee No. 3, are sharing common address with the KAFL at 16, Indian Exchange Place, 1st Floor, Kolkata, West Bengal, India – 700001.
- d. The Noticee No. 4 (Sarvottam Advisory Private Limited) has common director; Ms. Kavita Dipan Patel and also common director; Ms. Kanchan Ramesh Mokal with CPAL. It is already on record that, pursuant to approval of scheme of amalgamation by the Hon'ble High Court of Allahabad and Hon'ble High Court of Bombay, CPAL along with PML was merged into KAFL.

- e. The Noticee No. 5 (Overall Vincom Private Limited) has common director; Mr. Gautam Sen with Shivling Mercantile Pvt. Ltd. (now known as Sonnet Mercantile Pvt. Ltd.) and Trump Traders Pvt. Ltd. (now known as Ecstatic Traders Pvt. Ltd.). It also has a common director; Mr. Gopal Chandra Saha with Aryanraj Properties Pvt. Ltd. Further, these three entities, which are having common director with the Noticee No. 5, are sharing common address with the KAFL at 16, Indian Exchange Place, 1st Floor, Kolkata, West Bengal, India – 700001.
 - f. The Noticee No. 6 {Akriti Advisory Services Private Limited (now known as Jagruti Infra Developers Private Limited)} has common director; Ms. Kavita Dipan Patel and also common director; Ms. Kanchan Ramesh Mokal with CPAL which was merged with the KAFL.
 - g. The Noticee No. 7 (Supernova Advertising Private Limited) has a common director; Ms. Kanchan Ramesh Mokal with CPAL which was merged with the KAFL.
 - h. It was also noted that the Noticees were placing the sell orders in similar pattern during Patch – 1 of the investigation period.
- 17.** It is extremely difficult to prove facts which are especially within the knowledge of parties concerned and the legal proof in such circumstances depends upon the attending circumstances and, therefore, circumstantial evidence has to be taken into consideration. In this connection, it would be appropriate to refer to the Order of the Hon'ble Supreme Court of India in SEBI v Kishore Ajmera; Civil Appeal No. 2818 of 2018 (dated February 23, 2016), wherein the following has been observed with respect to market manipulations:

“It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the

absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion...

- 18.** I note from the table produced at para 7(e) and sell orders as analysed in para 12(d), (e), (f) and (g) that by placing sell orders in aforesaid pattern the Noticee No.1 has contributed 11.71% of LTP by its aforementioned four trades, Noticee No. 2 has contributed 14.68% of LTP by five trades, Noticee No. 3 contributed 13.90% of LTP by four trades and the Noticee Nos. 4, 5, 6 and 7 have contributed 5.22%, 2.22%, 3.65% and 4.04% respectively by their single trade. As such, the seven Noticees have contributed to raising the price of the scrip of KAFL, by each of their sell trade executed in aforesaid pattern, by Rs. 21.25 (i.e. 55.41%) of the total market LTP.
- 19.** As detailed above, in the aforementioned 17 trades, the Noticees have placed lesser quantities of sell orders, in comparison to the existing buy orders and also their higher holding of KAFL scrip, on different dates matching the available buy price, which were placed at higher price than the last traded price. Thus, it is noted that by placing sell orders in aforesaid pattern, the Noticees contributed in increasing the price of KAFL scrip with each of their trades during the investigation period. If the Noticees were the *bonafide* sellers, they should have sold substantial / equivalent number of shares held by them corresponding to the available buy orders and had the Noticees did not intervene by putting the sell orders in a manner shown above for lesser quantities, the price of the scrip would not have risen further or increased as shown in para 18 above.
- 20.** I further note that in a similar matter of Sanjay Kumar Tayal & Others vs SEBI, (SAT Appeal No. 68 of 2013) where an entity was found to have raised the New High Price (NHP) by placing just 1 share in buy order, in each of nine transactions, when sell orders were available for higher

quantity (contributing to 9.17% of NHP), the Hon'ble Securities Appellate Tribunal (SAT) while upholding the findings and penalty imposed by the Adjudicating Officer, vide its Order dated February 11, 2014, *inter alia* observed as under:

“ 9..... Very fact that the appellant had indulged in self trades/ LTP/ NHP without giving justifiable reason, clearly justifies the inference drawn by the AO that the trades executed by the appellant were manipulative trades.

10.In the facts of the present case, in our opinion, no fault can be found with the decision of the AO that the trades executed by the appellant were manipulative trades and hence, the appellant was guilty of violating the SEBI Act and the PFUTP Regulations.

- 21.** The pattern of trading, the repetitive nature of orders, the volume of trade, the illiquid nature of the scrip, the magnitude of impact of trading on LTP, connections of the entities etc. are the relevant factors for consideration while any inference is drawn in such case of manipulation.
- 22.** As detailed in previous paras particularly 12 and 18, the Noticees have consistently placed sell orders for lesser quantities comparing to their holdings and existing buy order volume and also matched the price with the existing buy orders and thereby contributed in raising the price of the scrip of KAFL, by each of their sell trade executed in the particular pattern, by Rs. 21.25 (i.e. 55.41%) of the total market LTP. I note that the pattern of placing sell orders in aforementioned manner in illiquid scrip of KAFL was continued by the Noticees during the investigation period for the purpose of setting a new high price of the scrip, by each trade and their consistent trading pattern led to manipulation in the price of KAFL scrip during the said period.
- 23.** Further, considering the connections of the Noticees with the KAFL and their manner of placing of sell orders for lesser quantities, on different dates matching the buy order price, in-spite of existing sufficient buy orders, releasing small quantity of shares in each transaction, which were above LTP, leads to the conclusion that the same was done with a view to manipulate the price of KAFL scrip. Further, the attending circumstances

including the proximity of the Noticees with the company indicate that the Noticees had no genuine intention to sell the shares and the sell trades were executed in fraudulent manner with a view to create misleading appearance of trading in scrip at higher prices and thereby manipulating the price of KAFL scrip during the investigation period.

- 24.** In view of the above analysis, I find that the dealings of the Noticees are manipulative and, therefore, the charges levelled against them in the SCN regarding the contravention of the provisions of Sections 12A(a), (b) & (c) of the SEBI Act, 1992 read with Regulations 3(a),(b),(c),(d) and Regulations 4(1), 4(2)(a) & 4(2)(e) of PFUTP Regulations, 2003 stand established.

DIRECTIONS:

- 25.** In view of the above, in order to protect the interest of the investors in securities market, I, in exercise of the powers conferred on me under Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 and Regulation 11 of the PFUTP Regulations, 2003, hereby restrain Noticee No. 1 (Eversafe Promoters Private Limited), Noticee No. 2 (Bholebaba Suppliers Private Limited), Noticee No. 3 (Subhankar Exim Private Limited), Noticee No. 4 (Sarvottam Advisory Private Limited), Noticee No. 5 (Overall Vincom Private Limited), Noticee No. 6 {Akriti Advisory Services Private Limited (now known as Jagruti Infra Developers Private Limited)} and Noticee No. 7 (Supernova Advertising Private Limited) from accessing the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, for a period of **four years**. It is, further, clarified that the existing holding of securities of the Noticees, including the units of mutual funds, shall remain frozen during the period of restraint.

- 26.** I note that vide interim order dated March 29, 2016 (later confirmed through confirmatory order dated June 15, 2016), the Noticee No. 2 (Bholebaba Suppliers Private Limited) and Noticee No. 5 (Overall Vincom Private Limited) were restrained from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly, in any

manner whatsoever. In this context, I note that these two entities Noticee No. 2 and Noticee No. 5 have already undergone the prohibition imposed vide interim order for a period of more than two and half years. Hence, the prohibition already undergone by the Noticee No. 2 and Noticee No. 5, pursuant to aforementioned SEBI Order, shall be adjusted while computing the period in respect of prohibition imposed vide this Order.

27. The Order shall come into force with the immediate effect.

28. A copy of this Order shall be forwarded to the Noticees, all the recognised stock exchanges, depositories and Registrar and Share Transfer Agents of all Mutual Funds for the necessary compliance with the above directions.

DATE: December 05, 2018

PLACE: Mumbai

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA