

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

IN THE MATTER OF KIRLOSKAR INVESTMENT AND FINANCE LTD.

**In respect of Mr. Hari Singh Champawat, Mr. Keshar Singh Rathore and Mr.
Manohar Singh Rathore**

Date of hearing: September 29, 2009

Appearances

For Noticees : None Appeared

**For SEBI : Mr. Suresh Gupta, General Manager
Mr. Chandrakant Mitra, Assistant General Manager
Mr. Pradeep Kumar, Legal Officer
Mr. Kirti Kumar Jadhav, Legal Officer**

ORDER

**UNDER SECTIONS 11 AND 11B OF SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992 READ WITH REGULATION 44 OF THE SEBI
(SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATION, 1997**

- 1.** The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into dealings in the scrip of Kirloskar Investment and Finance Ltd. (hereinafter referred to as 'KIFL') under Regulation 38 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 (hereinafter referred to as 'SAST Regulations'). Investigations were initiated as there was a sudden spurt in the share prices of KIFL from Rs.2 on November 05, 1999 to Rs.19.45 on December 13, 1999 and declined to Rs.9 on December 17, 1999. During the time of investigation the scrip of KIFL was listed on Bombay Stock Exchange (hereinafter referred to as 'BSE') and Bangalore Stock Exchange (hereinafter referred to as 'BgSE'). Preliminary investigations revealed change in control of company ('KIFL') during July, 1999 to October 01, 1999.
- 2.** The investigations revealed that Mr. Hari Singh Champawat (Ex-Chairman, KIFL) along with Mr. Keshar Singh Rathore (Ex-Whole Time Director, KIFL) and Mr.

Manohar Singh Rathore (Ex-Director, KIFL) (hereinafter collectively referred to as 'noticees') acquired the control of KIFL from Mr. Vijay Kirloskar (Ex-Chairman, KIFL) and his associates. However, it was noticed that they had not made any open offer to public as required under Regulations and thereby violated Regulation 12 of SAST Regulations.

3. On completion of the investigations, *inter alia* SEBI issued show cause notice dated November 29, 2002 (hereinafter referred to as 'SCN'), under Regulations 44 and 45 of SAST Regulations and Section 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') communicating thereby the alleged violation of Regulation 12 of SAST Regulations to the noticees. The SCN alleged that Hari Singh Champawat while acting in concert with Keshar Singh Rathore and Manohar Singh Rathore (both hereinafter referred to as 'persons acting in concert') had acquired 12,50,625 shares constituting 11.596% shares of the paid up capital of KIFL on August 10, 1999 from Vijay Kirloskar, M/s Kirloskar Electric Company Ltd. and M/s Best Credits Private Ltd. Hari Singh Champawat became the single largest shareholder in the company as on August 10, 1999 and had acquired the control over the company without making a public announcement as required by the provisions of the SAST Regulations. The SCN, therefore alleged that the acts of the noticees were in violation of Regulation 12 of SAST Regulations. Accordingly, it called upon the noticees to show cause as to why appropriate directions under Section 11, 11B and 11(4) of SEBI Act should not be issued against them.
4. The SCN returned undelivered from Manohar Singh Rathore and reply was only received from Hari Singh Champawat vide his letter dated December 10, 2002. Subsequently, vide letters dated May 30, 2003, Keshar Singh Rathore and Manohar Singh Rathore were reminded about the SCN. However, both the letters returned undelivered. The documentary evidences as requested by Hari Singh Champawat were forwarded to him vide letter dated May 30, 2003. Hari Singh Champawat vide his letters dated June 19, 2003 and July 18, 2003 requested for more time to reply and finally vide letter dated August 18, 2003 replied to SCN.

5. In view of non-delivery of SCN of Keshar Singh Rathore and Manohar Singh Rathore, efforts were made to collect their addresses from the Registrar of Companies (hereinafter referred to as 'ROC') through BgSE. SCN were again sent vide letters dated June 14, 2004 on the collected addresses but the same returned undelivered. Again, vide letter dated August 10, 2004 SCN was sent to Keshar Singh Rathore and vide letter dated August 11, 2004, SCN was sent to Manohar Singh Rathore through Ahmedabad Stock Exchange for pasting on their last known address. Ahmedabad Stock Exchange vide its letter dated August 20, 2004, returned the SCN of Manohar Singh Rathore since the present occupier of the stated address did not allow pasting of SCN. However, reply was received from Keshar Singh Rathore vide his letter dated September 01, 2004.
6. Pursuant to this, opportunity of personal hearing were granted to the noticees on March 21, 2007, March 30, 2007 and June 18, 2007. Hari Singh Champawat vide his letter dated June 23, 2007 expressed his inability to attend the scheduled hearing on June 18, 2007. However, neither any proof of delivery was received from Keshar Singh Rathore and Manohar Singh Rathore nor they attended the scheduled hearing. In view of consistent failure to deliver the SCN on Manohar Singh Rathore and subsequent personal hearing notices on both Keshar Singh Rathore and Manohar Singh Rathore, a press notification dated August 13, 2009, was issued as a mode of substituted service on the noticees who has failed to reply to the SCN and whose hearing letters also returned undelivered, with an advice that in absence of any reply, the matter would be proceeded *ex-parte*. I note that the stipulated period mentioned in the publication has expired. I have seen the service report and find that the principles of natural justice have been duly complied with, and it appears that Manohar Singh Rathore is not interested in submitting his stand in the present proceedings. Pursuant to this, another opportunity of personal hearing was provided to Hari Singh Champawat on September 29, 2009. However, he failed to attend the same. In view of this, I am compelled to proceed with the matter *ex-parte* against the noticees, on the basis of material available on record.

7. I have carefully examined the SCN, replies of SCN and other material available on record. The contentions of the noticees in their replies, in brief, are:

(i) Hari Singh Champawat:

- a. Had not acted in concert with Keshar Singh Rathore and Manohar Singh Rathore and/ or any other person.
- b. Resignation by old directors should be taken as separate independent decision and it cannot be correlated with his or appointment of any person on the board of the company.
- c. Requested for various documents.
- d. Offered compliance under 'SEBI Regularization Scheme, 2002' if applicable.
- e. Not in position to verify the details of shares acquired by him and percentage holding.
- f. His co-option as a director of KIFL was in normal course and was desired by the promoter director of KIFL and same cannot be construed as or brought within the ambit of an acquisition of the control over the company within the meaning of Regulation 12 of SAST Regulations.
- g. The act of resignation by Vijay R. Kirloskar and other members on August 10, 1999 was their own, beyond his control and authority. Further, he did not have any nexus with other appointees as they were also appointed by Vijay R. Kirloskar as his representatives.
- h. The transfer of 12,50,625 shares of the company to him by Vijay R. Kirloskar and other Kirloskar group companies was within the limit laid down under Regulation 11 of SAST Regulations and the same was disclosed to and also was within the knowledge of Board of Directors.
- i. His appointment was not aimed to take over the management of the company.
- j. The change of the name of KIFL was desired by Vijay R. Kirloskar and was in consonance with the decision taken at the meeting held on July 26, 1999 chaired by Vijay R. Kirloskar.

- k. His appointment as director was for a particular period and purpose and he resigned from the Board of directors of KIFL. Same does not attract Regulation 12 and 14 (3) of SAST Regulations.

(ii) Keshar Singh Rathore:

- a. Had not acted in concert with Manohar Singh Rathore.
- b. Was not single largest holder in KIFL.
- c. His co-option as a director of KIFL was in normal course and was desired by the promoter director of KIFL and same cannot be construed as or brought within the ambit of an acquisition of the control over the company within the meaning of Regulation 12 of SAST Regulations.
- d. The act of resignation by Vijay R. Kirloskar and other members on August 10, 1999 was their own, beyond his control and authority.
- e. Transfer of shares of KIFL by Vijay R. Kirloskar and other Kirloskar group companies was within the limit laid down under Regulation 11 of SAST Regulations and as required the same was disclosed to and also was within the knowledge of Board of Directors.
- f. His appointment was not aimed at all to take over the management of the company as alleged.
- g. The change of the name of KIFL was desired by Vijay R. Kirloskar and was in consonance with the decision taken at the meeting held on July 26, 1999 chaired by Vijay R. Kirloskar.

8. I note that in their replies noticees have admitted that Hari Singh Champawat became Chairman, Keshar Singh Rathore became Whole Time Director and Manohar Singh Rathore became Director in KIFL. Further, Hari Singh Champawat has admitted the fact of transfer of shares of KIFL by Vijay R. Kirloskar and other Kirloskar group companies. However, the noticees have argued that this was not change in control as on July 26, 1999, noticees were invited to attend the board meeting of KIFL as an invitee. Vijay R. Kirloskar got them co-opted as the director of the company for the reasons disclosed before the Board. The management of the company was facing serious financial problems and it was not possible for the management by itself to take effective action to over take the same. Therefore,

Vijay R. Kirloskar invited and persuaded them to be co-opted on the Board of Directors. Heeding to his persistence request and persuasion, they came forward to rescue the company and consented to be co-opted as director of the company. This was during the normal course and desired by promoter of KIFL and same can not be construed as to brought within the meaning of Regulation 12 of SAST Regulations. I am not convinced with the argument of the noticees as under the present proceedings it is irrelevant as to in what circumstances the noticees came in control of KIFL.

9. After having examined the stated facts, the issues remains for my consideration is whether noticees have triggered Regulation 12 of SAST Regulation or not:

a. I note that KIFL was a non banking finance company (hereinafter referred to as 'NBFC') whose application for registration was rejected by Reserve Bank of India (hereinafter referred to as 'RBI').

b. From the minutes of the Board Meeting of KIFL dated July 26, 1999, I observe that the noticees were appointed as directors of the company. During this meeting Hari Singh Champawat was authorized to open/ close/ modify the bank accounts of KIFL, he was also authorized to add/ delete/ modify the names of authorized signatories at his discretion. Hari Singh Champawat became the Chairman of KIFL upon resignation of Vijay R. Kirloskar on August 10, 1999. Further, from the investigations, it is also noted that as on October 01, 1999, noticees were on the Board of KIFL. The particulars of their position are as under:

Name	Designation	Details
Hari Singh Champawat	Chairman	Director from 26-07-99 & Chairman from 10-08-99
Keshar Singh Rathore	Whole Time Director	Director from 26-07-99 & Whole Time Director from 01-09-99
Manohar Singh Rathore	Director	Director from 26-07-99

c. I further note that consequent to the resignation of Vijay R. Kirloskar, Hari Singh Champawat acquired 12,50,625 shares constituting 11.596% of the paid

up capital of KIFL and became the single largest shareholder in the company as on August 10, 1999 from M/s Best Credits Private Ltd. and M/s Kirloskar Electric Company Ltd. and by this he became the single largest shareholder of the company as on August 10, 1999. I have also seen that Vijay R. Kirloskar vide his letter dated September 24, 2002, has confirmed that around July 26, 1999 he along with M/s Best Credits Private Ltd. and M/s Kirloskar Electric Company Ltd., received monies for the sale of KIFL shares to Hari Singh Champawat through off-market deal at the rate of Re.1 per share.

d. From the minutes of the board meeting dated August 10, 1999 of KIFL, I observe that Manohar Singh Rathore proposed the name of Hari Singh Champawat to be elected as Chairman and Keshar Singh Rathore seconded the same. Further, Hari Singh Champawat proposed the name of Keshar Singh Rathore to be appointed as the Whole Time Director of the company and Manohar Singh Rathore seconded the same. I note that the noticees were handling the day to day activities of KIFL and were taking decisions in the Board Meetings. The issues discussed in the Board Meetings and decisions taken thereon includes the following:

- Fixation of remuneration payable to auditors.
- Appointment of auditors.
- Authorising of executives/ officers for various purposes.

I note that these decisions are important matters relating to management and policy, handled by the noticees during their tenure in KIFL.

e. I note that, prior to Annual General Meeting (hereinafter referred to as 'AGM'), the noticees had filed form no. 29 with Registrar of Companies, Bangalore (hereinafter referred to as 'RoC') on July 26, 1999 and gave their consent to act as Directors of KIFL.

f. I note that KIFL also informed BgSE vide its letter dated September 07, 1999, about the resignation of all Directors including Vijay R. Kirloskar and induction

of the new three directors namely Hari Singh Champawat, Keshar Singh Rathore and Manohar Singh Rathore. However, BgSE did not receive any communication from new directors regarding open offer to the public in compliance to the Regulation 12 of SAST Regulations.

g. Noticees have submitted that even after their appointment as directors, the company continued to be controlled and managed by Vijay R. Kirloskar. I note that this argument of noticees appears to be baseless as Vijay R. Kirloskar had resigned on August 10, 1999 and thereafter he had no legal authority to control the affairs of the company.

10. I note that following are the provisions of the SAST Regulations which requires consideration in the present matter:

“Regulation 2(1)(c):

“**Control**” shall include the right to appoint majority of the directors or to control the management or the policy decision exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner”.

Regulation 12:

Irrespective of whether or not there has been any acquisition of shares or voting rights in a company, no acquirer shall acquire control over the target company, unless such person makes a public announcement to acquire shares and acquires such shares in accordance with the regulations.

Provided that nothing contained herein shall apply to any change in control which takes place in pursuance to a resolution passed by the shareholders in a general meeting

Regulation 14(3):

“The public announcement referred to in Regulation 12 shall be made by the merchant banker not later than four working days after any such change or changes are decided to be made as would result in the acquisition of control over the target company by the acquirer.”

A reading of the definition of the word 'control' as given in Regulation 2(1)(c) makes it clear that possession of any of the following rights by any person amounts to control in hand of such person:

- a. to appoint majority of the directors
- b. to control the management
- c. the policy decision.

- 11.** Further, reliance may be placed upon the decision of Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in the matter of B.P. Amco Plc. Vs. SEBI wherein Hon'ble SAT held that not only a person directly/ indirectly acquiring the shares or voting rights in the target company or acquiring control over the target company is a acquirer, but on agreeing to acquire shares/ voting rights or control is also an acquirer and it is not necessary that one should actually acquire share/ voting rights or control to consider him as an acquirer, it would suffice if a person agrees to acquire shares/ voting rights/ control over the target company.
- 12.** From the investigation report and the findings as noted above at para 9 (d), it is clear that noticees namely Hari Singh Champawat, Keshar Singh Rathore and Manohar Singh Rathore were acting in concert to acquire control of KIFL. On becoming director of KIFL, noticees while acting in concert to acquire control of the company, gained control of the company as the management was under their control and they took policy decisions in terms of Regulation 2(1)(c) of SAST Regulations. On coming into control of KIFL, noticees were obliged to follow the requirements as laid down in Regulation 12 of SAST Regulations. Therefore, it is concluded that noticees has violated Regulation 12 of SAST Regulations by not making a public announcement.
- 13.** Therefore, taking into consideration all the facts, circumstances and other materials available on record, in exercise of the powers conferred upon me under Section 11 and 11B of SEBI Act, 1992 read with Regulation 44 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997, I hereby,

restrain Hari Singh Champawat, Keshar Singh Rathore and Manohar Singh Rathore from accessing the securities market and also prohibit them from buying, selling or otherwise dealing or associating with the securities market in any manner whatsoever, for a period of one year.

14. This order shall be served on all recognized stock exchanges and depositories to ensure that the noticees are not allowed to undertake transactions as prohibited in Para 13 above.
15. This order shall come into effect immediately.

DATE : 10/ DECEMBER/2009
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA