

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

**IN THE MATTER OF KRISHNA ENGINEERING WORKS LIMITED
In respect of Krishna Engineering Works Limited and Mr. Gurbachan Juneja**

Date of hearing: July 16, 2010

Appearances

For Noticees: Mr. Sajeve Deora, Chartered Accountant
Mr. Ambarish Chatterjee, Company Secretary

For SEBI: Mr. Jai Sebastian, Presenting Officer
Ms. Medha Sonparote, Deputy General Manager
Mr. Pradeep Kumar, Legal Officer
Mr. Naveen Kumar, Manager

ORDER

Under Section 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

1. Securities and Exchange Board of India (hereinafter referred as 'SEBI') conducted investigation in the scrip of Krishna Engineering Works Limited (hereinafter referred as 'KEWL') for the period of November 08, 2004 to February 02, 2005. The investigation was conducted *inter-alia* to ascertain possible violation of provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations').
2. The trading details of persons who had traded in the scrip were collected and analyzed along with the data of volumes contributed. During the investigation period, the price of the scrip increased from ₹2.40 as on November 08, 2004

to ₹10.45 as on February 02, 2005. The total volume traded in the scrip during the relevant period was 92,28,419 shares.

3. Investigations revealed that during the relevant period KEWL came out with various announcements and at the same time the promoter/ directors of KEWL transferred huge quantities of shares in off-market transactions. These shares were later on off-loaded in the open market after the announcement of December, 2004, quarterly results of KEWL, when the share prices were high.
4. On completion of the investigations, SEBI issued a common show cause notice dated July 02, 2008 (hereinafter referred to as 'SCN') to KEWL and Mr. Gurbachan Juneja, Managing Director, KEWL (hereinafter both collective referred to as 'noticees') under Sections 11, 11(4) and 11B of SEBI Act read with Regulation 11 of PFUTP Regulations. The SCN alleged that the company came out with various positive announcements regarding restructuring of debts, huge order book position from overseas and domestic customers etc. Thereafter, the promoters/ directors of KEWL transferred 30,08,800 shares in off-market transactions on December 27, 2004, to the entities appeared to be connected/ related to KEWL and its promoter/ directors. These entities later on off-loaded these shares of KEWL in the market after the company announced its December, 2004 quarterly results and other development on January 11, 2005. The SCN, therefore, alleged that the acts of KEWL are in violation of Regulation 3 (a),(b),(c),(d), 4(1), 4(2)(a),(k) and (r) of PFUTP Regulations. Accordingly, SCN called upon the noticees to show cause as to why action under Sections 11, 11(4) and 11B of SEBI Act read with Regulation 11 of PFUTP Regulations, including restraining these from accessing the capital market and prohibiting from buying, selling or dealing in the securities for a specific period should not be issued against them.
5. Noticees vide their letter dated July 21, 2008, sought an extension of time for twenty days to reply to SCN. However, they failed to reply to the SCN.

Thereafter, vide another letter dated August 20, 2008, KEWL again asked for extension of time. This time again it failed to reply to the SCN.

6. Before proceeding further in the matter, an opportunity of personal hearing was granted to the noticees on July 31, 2009. On the date fixed Mr. Gurbachan Juneja, Managing Director, KEWL, Mr. Satish Ahujha, Authorized Representative and Mr. Sajeve Deora, Chartered Accountant appeared and sought adjournment for settlement of proceedings by way of consent order. Acceding to the request of noticees the matter was adjourned. SEBI, however, did not agree to settle the proceedings by consent as the terms offered by the noticees were not adequate and finally rejected the application. Pursuant to such rejection, the present proceedings have been revived from the stage where these were kept in abeyance.
7. Accordingly another opportunity of personal hearing was granted to the noticees on July 16, 2010. On the date fixed Mr. Sajeve Deora, Chartered Accountant and Mr. Ambarish Chatterjee, Company Secretary appeared for the noticees and made submissions. The representatives of noticees also sought one week time to file the written submission which was granted to them. Noticees filed written submissions vide their letter dated July 24, 2010, which has been taken on record.
8. I have carefully considered the SCN, written submission and the material available on record. The submissions of the noticees in brief are:
 - a. The company was engaged in the business of manufacture of diesel engine parts and had major supplies to Indian government for its defence items and to automobile companies.
 - b. Networth of company was eroded in 1999. The Board for Industrial and Financial Reconstruction (hereinafter referred to as 'BIFR') registered the company as sick company in its order dated August 20, 1999.
 - c. Mr. Gurbachan Juneja sold his shares in an off market deal in the last week of December, 2004, before the announcements of the quarterly results for the

quarter ended on December 31, 2004 at the rates closer to the prevailing market rates.

- d. Gurbachan Juneja sold his shares to meet the working capital requirements of KEWL and to settle with the creditors of the company since being a sick company it could not get any working capital limit from its bankers.
 - e. The company developed several new products for large domestic, international and multinational companies. These new products translated into receiving new orders from its clients making the order book strong which was mentioned in the notes to the quarterly results for the quarter ended on December, 2004.
 - f. Gurbachan Juneja had sold the shares at a price lower than his acquisition price and thereby incurred losses.
 - g. The statements made in the quarterly results for the quarter ended December, 2004 were not false or misleading.
 - h. KEWL had appointed Mitcon Consultancy Services Ltd. to carry out a study for restructuring of the company.
9. I note that noticees have accepted that they had transferred large quantities of shares of KEWL. Considering this, the issue arises for my consideration is: Whether KEWL made pre-mature/ misleading corporate announcements and thereby benefited the promoter/ directors who offloaded their holdings?
10. **Whether KEWL had made pre-mature/ misleading announcements and thereby benefited the promoter/ directors who offloaded their holdings?**
- a. I note that noticees had made corporate announcements during the relevant period of time having bearing on the share price of the company. I am considering all these announcements separately to find out whether these were misleading or not.
 - i. **Huge order book position from overseas and existing domestic customer.**

- Noticees had made the announcement regarding huge orders received by KEWL from Ashok Leyland Limited, Tata Motors Limited, Ministry of Defence, overseas orders from Italy and France. In support of this claim noticees have submitted copies of some of the orders pending execution at the end of quarter of December, 2004.
- I note that KEWL has not provided any evidence/ documents regarding orders being received from Ministry of Defence or overseas buyers. It has given an evidence in respect of an order from Tata Motors which is worth ₹6.50 crore and an order from Ashok Leyland which does not mention the value of the order. The noticees have argued that they are not keeping the record/ copies of the orders relating to previous years.
- Even if, this argument of noticees is accepted, then also the issue remains that they have failed to provide any details as to when the orders so received were executed/ dispatched/ delivered by them. I note that such details are important for reaching at a conclusion that the noticees received genuine orders from its clients.

ii. Appointed M/s Mitcon Consultancy Services Limited, for restructuring of debts of KEWL.

- Noticees have argued that the net worth of KEWL was eroded in 1999 and since then it is under Board for Industrial and Financial Reconstruction (hereinafter referred to as 'BIFR'). It has been submitted that KEWL appointed M/s. Mitcon Consultancy Services Limited, a joint venture of ICICI, IDBI, IFCI, State Level Corporation and Banks for their services with regard to the restructuring of debts of the company.
- I note that when KEWL was asked to submit the copies of correspondence exchanged with Mitcon Consultancy Services Limited regarding the restructuring proposal for the same, only two letters were provided. One of these letter is issued by KEWL to Mitcon Consultancy Services Limited dated December 28, 2004, regarding the restructuring of debts of KEWL and the another letter from Mitcon Consultancy Services

Limited to KEWL dated December 30, 2004, requesting it to remit a sum of ₹5,100 towards service tax. Except these no other document has been placed on record by the noticees to prove that Mitcon Consultancy Services Limited had carried out study of its technical facilities to restructure the company. From the documents submitted, I observe that, it is not clear as to when and what services were availed by KEWL of Mitcon Consultancy Services Limited.

iii. KEWL expect a turnover of ₹1500 million by the year ending 2006.

- KEWL announced that it has India's best integrated casting, forging and sophisticated machining plant for manufacturing of automobile component and it expects spirit in the automobile sector and expect a turnover of ₹1500 million by the year ending 2006.
- It has been submitted by the noticees that during the period of November, 2004 to February, 2005 some 'strategic investor' namely M/s Strategic Capital Ventures Limited had shown interest to part finance the restructuring proposal of KEWL. Seeing the restructuring plan and boom in automobile industry various orders were placed with KEWL. However, due to some reasons the deal with the strategic investor could not be finalized and the company could not execute the orders so received. Hence, the targeted turnover was not achieved.
- It is seen that when the details of correspondence exchanged with the said strategic investor was called for, KEWL failed to provide any direct evidence for the same. The letter it submitted for this shows the details of strategic investor, however, the same is addressed to Stressed Assets Stabilisation Fund of IDBI Bank. Except this document, KEWL has not submitted any independent document to show that M/s Strategic Capital Ventures Limited was interested in helping it.

From the above discussion, it is noted that the noticees have failed to provide documents to strengthen their claims. Taking note of this and in lack of supporting documents, it can be said that the corporate announcements made by KEWL were pre-mature and were misleading in nature, apparently to lure innocent investors.

- b.** KEWL has submitted that it manufactured items used in defence equipments and rail construction. However, it has not provided any details to show that there was any dealing with the Government of India. I note that KEWL was listed in the year 1993 and came out with rights issue in the year 1995 and by the year 1999, its entire net worth got eroded and was declared a sick company. These facts suggests that KEWL was running an unprofitable business and the affairs of the company were being mismanaged. With regard to the efforts of KEWL to revive, I note that noticee has not produced sufficient documents which could substantiate the claim.

KEWL had submitted that it was unable to procure working capital for its manufacturing operations and was negotiating with its creditors for settlement. However, it may be noted that KEWL did not provide any documents except the letters written by it to the banks and financial institution in support of the claim. No correspondence from the creditors or suppliers was provided by KEWL in this respect, which, again puts a question mark on its contentions. Further, the submission of KEWL that it has settled with some of its creditors, completed technical restructuring, installed new plant/ equipments and developed new products for large domestic and international companies are again not supported by sufficient documents.

- c.** KEWL had shown sudden increase in its total income from ₹4.96 crore for the quarter ended September, 2004 to ₹16.81 crore for the quarter ended December, 2004. A summary of the financial results and quarterly results of KEWL has been brought out in tabular format for reference:

(₹ in Crore)

	Audited Annual			Unaudited Quarterly			
Date Begin	1-Apr-05	1-Apr-04	1-Apr-03	1-Jan-05	1-Oct-04	1-Jul-04	1-Apr-04
Date End	31-Mar-06	31-Mar-05	31-Mar-04	31-Mar-05	31-Dec-04	30-Sep-04	30-Jun-04
Total Income	36.4	41.13	37.33	11.28	16.81	4.96	8.18
Net Profit	-5.9	-8.25	-13.91	-2.92	3.56	-6.02	-2.2
Equity Capital	13.88	13.45	13.45	13.45	13.45	13.45	13.45

From the above, it is seen that during the quarter ended December 31, 2004, KEWL earned a net profit of ₹3.56 crore as against net loss of ₹6.02 crore observed during the quarter ended September 30, 2004. The noticees have argued that due to some taxation matters, KEWL could not dispatch the goods worth about ₹5 crore in September, 2004. This order was executed in the beginning of December, 2004 quarter. Further, there was no sudden rise in the total income as the performance of the company was more or less the same compared to previous years.

Further, the turnover of the company for the December, 2004 quarter was ₹16.81 crore as against ₹4.96 crore for the quarter ended September, 2004. With regard turnover for the December, 2004 quarter, I note that KEWL could not provide documents such as proof of dispatch/ delivery, copies of all orders executed etc. more-over KEWL could only collect ₹3.51 crore during December, 2004 January, 2005 and February, 2006 (as evidenced from bank statements of KEWL for the respective months) against a sale of ₹16.81 crore for the quarter ending December 31, 2004.

As already discussed above, the noticee has not provided any details to show as to when the orders pending with it were executed. Assuming the orders were executed in the next quarter (i.e. March, 2005), the turnover of the company should have increased or atleast remained same, however, a perusal of the results of the company shows decline in the turnover of the company for this quarter. This indicates that the company had manipulated quarterly results by showing high income and profit as during the previous quarter and the next quarter the company was making loss.

- d. During the quarter ending December 31, 2004, the promoters/ director of KEWL started off-loading their holdings to some related entities. In total Gurbachan Juneja, Mukesh Juneja, Amrik Singh, Krishna Wanti, Monica Juneja, Charanjit Singh, Gouri Mahajan transferred 30,08,800 shares of KEWL in off-market representing 22.2% of its equity capital to related entities namely Sunil Kumar Balkrishna Sharma, D. Krishna, Amit Ashok Khanna, Manoj Kumar Mahanga Ram, Rakesh Kumar and Ashok Kumar Upadhyay. I observe that noticees have not disclosed the reasons for the sale of the shares in off-market by the promoters/ directors of KEWL, when they could have sold these shares directly in market. I also note from the bank account statements submitted by KEWL of Gurbachan Juneja, Ms. Krishna Wanti Juneja and Mr. Mukesh Juneja held with The Citizen Urban Co-operative Bank Limited that there is no corresponding entry of any financial transactions to the off-market transactions done by these entities.
- e. The noticees have argued that the price at which the shares purchased by Gurbachan Juneja were ranged between ₹10 - ₹25 per share and he had not made any profits from the sale of these shares. I note that noticees have provided the transfer price of the shares, however, such details are of no relevance as the bank account of Gurbachan Juneja with Citizen's Urban Co-operative Banks Limited do not show any receipt of money during September, 2004 to March, 2005, which goes on to proves that it was not an arms length transaction. Further, I note that the price of the scrip at the beginning of investigation period was around ₹2.50 which started picking up from December, 2004.
- f. I note that the shareholding patterns for the quarter ending September, 2004 and December, 2004, showed the same shareholding of promoters' which means noticees had not disclosed the change in the shareholding pattern of KEWL, by the sale of shares by Gurbachan Juneja (6,94,600 shares - 5.13%) and Ms. Krishna Wanti (6,79,200 - 5.01%) through off-market trades during

December, 2004, to the stock exchange. Noticees have submitted that due to an error in compiling the information for the quarter ended December 31, 2004, as the share transfers happened in the last week of December 2004, the changes were reflected in the shareholding pattern submitted with the exchange for the quarter ended March 31, 2005. It has also been submitted that KEWL had sent a letter dated January 04, 2005 to National Stock Exchange (hereinafter referred to as 'NSE') regarding the sale of shares by promoters. I note that NSE has confirmed that they did not receive any such disclosure from noticees.

- g.** Persons namely Sunil Kumar Balkrishna Sharma, D. Krishna, Amit Ashok Khanna, Manoj Kumar Mahanga Ram, Rakesh Kumar and Ashok Kumar Upadhyay (admittedly related to noticees) after receiving the shares from promoter/ directors of KEWL in off-market, off-loaded these shares (net sold 25,68,379 shares) in the market mostly after the announcement of December, 2004, quarterly results and other corporate developments on January 11, 2005 by KEWL. Their net sale accounted for about 27.83% of total traded volume during the November 08, 2004 to February 2, 2005 period.
- h.** In view of the discussion above, I find the noticees guilty of violation of provisions of Regulation 3, 4(1), 4(2)(k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.
- 11.** Therefore, taking into consideration the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 19 of the SEBI Act read with Sections 11, 11B and 11(4) of SEBI Act, 1992 read with Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, do hereby restrain noticees, Krishna Engineering Works Limited [PAN: AABCK 0655R] and Mr. Gurbachan Juneja [PAN: AAQPJ 4257L] from buying, selling or dealing in securities market whatsoever or accessing the securities market, directly or indirectly, for a period of one year from the date of this order.

12. The stock exchanges are hereby directed to permit the respective members dealing for the noticees to square off their existing open positions, if any, at the earliest in Futures and Options segment. They must strictly ensure that no fresh positions are created for them.
13. 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 above.
14. This order shall come into force with immediate effect.

Date : 14/1/2011
Place: Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA