BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER
ORDER

Under Regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008 against Knack Corporate Services Private Limited (Registrar to an Issue and Share Transfer Agent - SEBI Registration No. INR000000957) in the matter of Ram Kaashyap Investments Limited.

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1. The Securities and Exchange Board of India ('SEBI') 2010 conducted an inspection, from November 23, 2010 to November 25, 2010 of the books of accounts and other documents/records, of Knack Corporate Services Private Limited (hereinafter referred to as "the noticee"), a Category I Registrar to an Issue and Share Transfer Agent (RTI and STA) registered with SEBI. It was observed during the course of inspection that the noticee acted as the registrar to the rights issue of Ram Kaashyap Investments Limited (hereinafter referred to as "Company") and it was the Share Transfer Agent (STA) for the Company even before the said rights issue. The Company opened its rights issue of 3,51,60,000 equity shares of ₹10/- each for cash aggregating to ₹35.16 crores for subscription by its shareholders from November 18, 2010 to December 16, 2010. Vivro Financial Services Private Limited (hereinafter referred to as "Vivro"), a SEBI registered merchant banker was the lead manager to the rights issue of the Company.

2. Since, the rights issue was open for subscription during the inspection period, while examining the noticee's activities in general , SEBI had also inspected its records pertaining to its role as a registrar to the said rights issue. During the inspection, it was noticed that there were several procedural and regulatory lapses in the functioning of the noticee as an RTI and STA in general and major non-compliances by it while handling the rights issue of the Company in particular.

3. In view of the such lapses and non-compliances, SEBI initiated proceedings against the noticee under the SEBI (Intermediaries) Regulations, 2008 ("the Intermediaries Regulations") and appointed a Designated Authority (hereinafter referred to as "the DA") to inquire into the following alleged contraventions by the noticee :
    (i) Clauses 1, 2, 3, 6, 17, 18 and 20 of the Code of Conduct specified under Schedule III read with Regulation 13 of the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 (hereinafter referred to as "the RTI and STA Regulations");
    (ii) Regulation 14(3) of the RTI and STA Regulations ;
    (iii) Regulation 54(1) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "the ICDR Regulations") and
    (iv) SEBI Circular No. 1 (94-95) dated October 11, 1994.

4. The DA submitted his Report dated November 29, 2011 wherein he found the noticee liable for violating the aforesaid provisions and recommended that the certificate of registration granted to

it be suspended for a period of three months. Thereafter, a show cause notice dated December 08, 2011 (SCN) enclosing therewith the Report, was sent to the noticee advising it to show cause as to why appropriate penalty including penalty as recommended by the DA should not be imposed on it. As the noticee did not send its reply within the time stipulated in the SCN, SEBI vide letter dated February 02, 2012 advised the noticee to submit its reply latest by February 10, 2012. The noticee, vide its letter dated February 08, 2012, submitted as follows:

a) It had earlier submitted a detailed reply dated August 19, 2011 and it does not have anything else to add at this stage.
b) It does not have any proof as regards the postmaster's reply, which it felt was based only on surmises.
c) It does not have any other defence from its side to prove its innocence in the matter and that it may have been guilty of negligence but was not involved in any fraud.
d) The mistakes were not done intentionally and arose only because of inexperience and trusting the wrong people.
e) It has learnt from its mistakes and assures that such lapses would not occur in future.
f) It has invested a lot in having robust internal controls and infrastructure to ensure that such lapses do not occur again and requested SEBI to consider its submissions and be lenient in its decision in the matter.

5. An opportunity of personal hearing was afforded to the noticee on March 30, 2012 and vide letter dated March 9, 2012 the noticee was informed about the date of hearing. Vide letter dated March 27, 2012, the noticee replied that it would not attend the personal hearing and *inter alia* made the following submissions :

"…..*we have taken utmost care and caution in sending the letters of offer to the shareholders. We also do not have any proof as regards the postmaster's reply, which we feel is based only on surmises.*

…… *shareholders have indeed applied on the same forms sent by us to them. … This conclusively disproves the replies of the post master.*

We would not be attending the personal hearing because of personal reasons and we request you to be lenient in your decision in the matter"

6. I have considered the SCN, the replies of the noticee and relevant material available on record. I note that various shareholders of the Company had complained that they have not received the Composite Application Forms (CAFs) for applying in the rights issue and were therefore not able to exercise their rights. During inspections it was found that CFAs were not dispatched to many shareholders. Only 439 applications for value of ₹31.92 crores were received in the rights issue. The cheques worth ₹23.90 crores towards subscription in the issue had bounced and the same included the cheques worth ₹23.75 crores issued by the Company's promoter, Mr. A. Venkatramani. On December 24, 2010, the total amount collected by way of subscription was only ₹8.12 crores which was much below the minimum required subscription amount of ₹31.64 crores. On December 28, 2010 i.e. much after closure of the rights issue, Mr. A. Venkatramani brought in an amount of ₹23.67 towards subscription in the rights issue. In view of these irregularities, SEBI, vide a letter dated January 5, 2011 instructed Vivro, the merchant banker to

advice the Company to refund the application monies to the shareholders. Pursuant to SEBI's advice, the Company had refunded the application money collected in the rights issue.

7. The first allegation against the noticee is that it failed to enter into a valid agreement with the Company. The DA has found that no valid agreement was executed between the noticee and the Company as required under Clause 1 of the SEBI Circular dated October 11, 1994 which reads as under-

"*1. In terms of rule 4(1)(b) of the SEBI (Registrars to an Issue and Share Transfer Agents) Rules, 1993, all Registrars to an Issue / Share Transfer Agents are required to enter into a legally valid agreement with the Issuers/Body corporate.*

…… …….

The Agreement must be stamped according to the Local Stamp Laws for the time being in force at the place of execution."

8. I note that the DA had examined the submissions and replies of the noticee while coming to the above conclusion. The conclusion is based on the facts that the noticee was not able to furnish a copy of any agreement between the Company and itself as required under the above mentioned circular, rather it had given a copy of a Memorandum of Understanding (MoU) between the Company and the noticee which was not on a stamp paper. I note that regulation 9A of the the RTI and STA Regulations, that provides for conditions of registration of RTI, obligates the RTI to enter into *'legally binding agreement'* with the body corporate or the person for or on whose behalf it is acting as such stating therein the allocation of their duties and responsibilities. The words *'legally binding agreement'* are of much significance since the agreement contemplated in regulation 9A read with Clause 1 of the above mentioned circular determine not only the *inter se* responsibilities and obligations of the issuer and RTI but also has bearing on the rights and interests of investors. Such agreement cannot be in the nature of informal arrangements such as MoU rather they must be enforceable and binding written agreements as per applicable laws including stamp laws. Since the noticee has not executed any such agreement with the Company, in the present case, I do not have any reason to differ with the findings of the DA.

9. The second allegation against the noticee is that it failed to produce, during the SEBI inspection, the transfer register having list of shareholders and that it allowed the Company to decide, on its behalf, the shareholders who are eligible for the rights issue as on the record date. I note that the noticee was the STA for the Company prior to its rights issue and also as on the date of the right issues. In terms of regulation 14(3) of the RTI and STA Regulations, every STA is required to maintain the list of holders of securities of the body corporate; the names of transferor and transferee and the dates of transfer of securities and such other records specified by SEBI, in respect of the body corporate on whose behalf the share transfer activities are carried on. Clause 20 of the Code of Conduct (for RTI and STA) read with regulation 13 of the RTI and STA Regulations further prescribes that a RTI and STA shall take adequate and necessary steps to ensure that continuity in data and record keeping is maintained and that the data or records are not lost or destroyed. Further, SEBI Circular dated October 11, 1994 *inter alia*, in para 5(ix) also

requires that a STA should insist the body corporate (on whose behalf it carries the share transfer activities) to authorise it to carry on the transfer of certificates.

10. Though the noticee submitted before the DA that the physical register was in its possession on the day of the inspection and it had only despatched the CAFs based on the list of shareholders eligible on the record date, it did not support the same with any proof. I note that during inspection , the noticee had admitted that it does not have the transfer register. I find that the noticee was acting as RTI as well as STA of the Company and was thus responsible to maintain records of holders of securities of the Company and also to deal with all matters connected with the transfer of securities as required under RTI and STA Regulations and the SEBI circular as mentioned above. The noticee has failed in its duties to maintain such records with it and produce it before the inspecting team. I, therefore, find that the notice has contravened the provisions of clause 5(ix) of SEBI Circular dated October 11, 1994, Regulations 14(3) of the RTI and STA Regulations and also the provisions of Clause 20 of the Code of Conduct prescribed in Regulation 13 for RTI and STA.

11. The third allegation against the noticee is that it did not procure funds upfront from the Company for meeting various issue-related expenses in contravention of para 5 (vii) of the SEBI Circular dated October 11, 1994. As per para 5 (vii) the RTI/STA should negotiate the payment terms with the issuer/body corporate and arrange to procure the funds in advance for meeting the various (issue-related) expenses and that substantial delay in payments should be immediately brought to the notice of SEBI/stock exchanges. From the MoU between the noticee and the Company, it is noted that the Company had undertaken "*make available in advance to the Registrar requisite funds for postage, mailing charges for dispatching of composite application forms with letter of offer, allotment letters, refund orders, share certificates etc.*" Before the inspection team the noticee had admitted its default in this regard and had stated that it managed through its own funds. However, before the DA the noticee had taken different stand that it had an arrangement with the Company whereby the noticee would mobilize all the funds required in respect of the rights issue and the same would be reimbursed by the Company later on after the issue went through. I find that no funds were procured by the noticee in advance as required by the SEBI circular, therefore, the noticee has contravened the provisions of para 5(vii) of the SEBI Circular dated October 11, 1994.

12. As regards allegations regarding dispatch of CAFs to the shareholders I note from records that during inspection the noticee stated that the CAFs were dispatched by the Company itself. The Company, vide a newspaper advertisement dated November 15, 2010, had stated that the noticee had dispatched all the CAFs by registered post / speed post to all the shareholders. On further inquiry about such contradictory statements the noticee submitted that it had dispatched the CAFs under 'Certificate of Posting' and not through Registered Post or Speed Post. The noticee had submitted that it had sent the CAFs to 9363 shareholders along with the abridged letter of offer on November 12, 2010 through certificate of posting. In support of such claim the noticee had furnished copies of proof of the purported dispatch through certificate of posting.

However, on confirmation being sought by SEBI thereon, the Depart of Post (the T. Nagar Post Office, Chennai) confirmed that 9363 articles, as claimed by the noticee that it had have dispatched the CAFs on November 12, 2010, was not at all booked under speed post, registered post, unregistered mail or even under certificate of posting.

13. I also note that the Company has given a false and misleading advertisements dated November 15, 2010 that the noticee had dispatched the CAFs to all the eligible share holders by Registered post and Speed Post and again on December 16, 2010 that the shareholders were inadvertently informed through earlier advertisements that the noticee had despatched the CAFs and the abridged letter of offer through registered post/speed post and that the CAFs were in fact despatched through Certificate of Posting.

14. I therefore, agree with the findings of the DA that the noticee has tried to mislead the investors, stock exchanges and SEBI.

15. I note that only 439 shareholders had applied in the rights issue of the Company. Neither the inspection team nor the DA had examined how 439 shareholders had applied i.e. whether on receipt of CAFs from the noticee or on the basis of information available in public domain. Even if the argument of the noticee is accepted, the admitted fact would be that it did not dispatch the CAFs through the prescribed mode i.e. registered post or speed post.

16. The noticee has contended that section 53 of the Companies Act, 1956 permits dispatch of CAFs by ordinary post. I note that in terms of section 53 of the Companies Act, a document may be served by a company on any member thereof either personally or by sending it by post to him to his registered address. In this regard , the Central Government, has vide *Circular No. 6 of 1992, dated 03.09.1992* clarified that "……*with a view to protect the interests of investors, the letters of offer for rights issue be also issued to the shareholders by registered post, in future.*" Further, in terms of regulation 54(1) of the ICDR Regulations, the abridged letter of offer along with CAFs should be dispatched through registered post or speed post to all the existing shareholders at least 3 days prior to opening of the issue. I note that as per section 32 of the SEBI Act , the provisions of the said Act are in addition to the provisions of the Companies Act. Thus, the provisions of the ICDR Regulations, that is framed in exercise of the statutory power conferred under sections 11A and 30 of the SEBI Act, are also in addition to the provisions of the Companies Act. Further, the SEBI Act and the ICDR Regulations are special enactments intended for the protection of investors. Therefore, in the matters of issue of capital, in addition to the general provisions of the Companies Act the issuer and other intermediaries associated with issue of capital are also obligated to comply with provisions of the SEBI Act and the Regulations framed thereunder. Therefore, the noticee, being an intermediary involved in the rights issue of the Company, was under a statutory obligation to send the application forms to the shareholders in terms of regulation 54(1) of the ICDR Regulations. I, therefore, do not find any merit in the submissions of the noticee in this regard and find it guilty of contravening the provisions of regulation 54(1) of the ICDR Regulations.

17. I note that the Department of Post (T Nagar Post Office, Chennai)vide letter dated December 24, 2010 had confirmed that the said 9363 articles claimed to have been issued by noticee under certificate of posting have not been booked under speed post, registered post, unregistered mail or through certificate of posting. From this letter, I note that the Department of Post had given valid reasons for such confirmation as under -

> *"If the article is booked under Speed Post, the postage charges for 336 grams is Rs.78/- and if it registered post the postage charges are Rs.102/- and if it is unregd. Mails the postage is Rs.87/-. Receipt would be tendered in respect of speed post article and registered mail. If the articles are posted under certificate of Posting, the amount collected would be written in words and figures by the Mails PA for having received the articles."*

18. I, therefore, do not agree with the contention of the noticee that the confirmation of Department of Post is based on surmises. I further note that the DA has found that in the proof of dispatch the noticee had shown that ₹107/- was incurred by the noticee to dispatch one article. If it was under certificate of posting, such amount as claimed is much higher (approx. 23%) than the amount payable (₹87/-) as per the above information from the Department of Post. I therefore, agree with the observations and findings of the DA that the noticee had, in order to hide its functional deficiencies, actually created false proof of dispatch of CAFs.

19. I also note that the noticee has displayed non-cooperation with the inspection team and had failed to submit the documents pertaining to the rights issue, including signature cards, proof of despatch of CAFs, etc.

20. In view of the above, I agree with the DA that the noticee had contravened the provisions of clauses 1, 2 , 3 , 6, 17 and 18 of the Code of Conduct for RTI and STA read with regulation 13 of the RTI and STA Regulations, which reads as follows:

> *"13. To abide by Code of Conduct. - Every registrar to an issue and share transfer agent holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule III."*
>
> ***"CODE OF CONDUCT***
>
> *1. A Registrar to an Issue and share transfer agent shall maintain high standards of integrity in the conduct of its business.*
>
> *2. A Registrar to an Issue and share transfer agent shall fulfil its obligations in a prompt, ethical and professional manner.*
>
> *3. A Registrar to an Issue and Share Transfer Agent shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment.*
>
> *6. A Registrar to an Issue and Share Transfer Agent shall make reasonable efforts to avoid misrepresentation and ensure that the information provided to the investors is not misleading.*
>
> *17. A Registrar to an Issue and share transfer agent shall co-operate with the Board as and when required.*

18. A Registrar to an Issue and share transfer agent shall not neglect of fail or refuse to submit to the Board or other agencies with which he is registered, such books, documents, correspondence, and papers or any part thereof as may be demanded/requested from time to time."

21. In view of the above observations, I find that the conduct of the noticee is highly irregular and improper and cannot be treated as a case of mere "negligence" as put forth by the noticee in its replies. The conduct of the noticee is nothing short of misrepresentation as it gave rise to a belief that the CAFs have been properly dispatched to the shareholders of the Company with the support of a false proof of dispatch.

22. I note that the rights issue of the Company was offered to the existing shareholders at par (Rs 10/ per share). During the period when the rights issue was open for subscription and later upto the first quarter of 2011, the market price of the shares of the Company was always above the rights issue price. During the last quarter of 2011, the share price of the Company touched a high of ₹34.45/. In this case, many shareholders have clearly been deprived of subscribing to rights issue as a result of non receipt of CAFs and they suffered on account of the callous failure and connivance of the noticee.

23. From the above mentioned observations and facts and circumstances of the case, I am convinced that the noticee has not maintained high standards of integrity and fairness in the conduct of its business. Apart from misrepresentation of the facts, the noticee has failed to exercise due diligence and proper care and to fulfil its obligations in a prompt, ethical and professional manner. The noticee has also failed to co-operate with the inspection team and submit the documents and records, as found by the DA. The noticee has, thus, violated the provisions of clauses 1, 2, 3 ,6, 17 and 18 of the Code of Conduct prescribed for RTI and STA, under the RTI and STA Regulations.

24. Another allegation against the noticee is that it did not take into its possession the signature cards from the Company and that it had processed the CAFs without verifying the authenticity of the applicants in the rights issue. I note that the SEBI Circular dated October 11, 1994 mandates the STA to maintain specimen signature cards. It is important for the noticee to have in its possession the signature cards as the same is necessary for confirming share transfer requests from the shareholders of the Company. The noticee was thus bound to call for and obtain the specimen signature cards from the Company. I, therefore, find that the noticee has contravened this provision of the SEBI Circular dated October 11, 1994.

25. In view of the above, I am satisfied that it is necessary to secure the proper management of the activity of the noticee. In my view, considering the facts and circumstances of this case and taking into account the interests of the investors , the action as recommended by the Designated Authority in his Report is commensurate with the failures, defaults contraventions and violation committed by the noticee.

26. In view of the aforesaid findings, I, in exercise of powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008, hereby suspend the certificate of registration granted to Knack Corporate Services Private Limited (SEBI Registration No. INR000000957), as a registrar to an issue and share transfer agent, for a period of three months.

27. The noticee is further directed to separately write to all its clients ; body corporate/companies); to make alternate arrangements for their registry and share transfer work during the suspension period of the noticee. The noticee shall hand over all the physical and the demat records of shareholders of its clients along with the database, after certifying their correctness, to the Registrar and Share Transfer Agent arranged by respective clients, under intimation to SEBI. The noticee shall ,after tallying the physical and electronic records with the share capital of the concerned issuer, confirm and certify to the concerned depositories that the transfer of records has been completed satisfactorily.

28. This Order shall come into force immediately on expiry of twenty one days from the date of this Order.

Date : November 8th, 2012
Place : Mumbai

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA