

Ref.: SEC&LEG/1207

December 31, 2024

BSE Limited
Phiroze Jeejeebhoy Towers
Dalal Street,
Mumbai 400 001
Scrip Code – 505283

National Stock Exchange of India Limited
Exchange Plaza, C -1, Block G,
Bandra-Kurla Complex, Bandra (E),
Mumbai 400 051.
NSE Symbol: KIRLPNU

Dear Sir / Madam,

Sub: Intimation under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 (“SEBI LODR”).

Please see attached, a copy of the letter dated December 30, 2024 issued by SEBI (“SEBI Letter”) in the matter of non-disclosure of the Deed of Family Settlement (DFS) dated September 11, 2009, entered into amongst the members of the Kirloskar family in their personal capacity.

The question of whether the DFS is binding on the Kirloskar companies is pending before the Civil Court since 2018, and despite this SEBI has opined on matters that are *sub-judice*. Further, SEBI’s decision not only contains factual inaccuracies but is in complete ignorance of *inter alia* settled principles of contract law, corporate laws and company law.

The Company maintains the stand that the Company is not bound by the DFS nor does the DFS have any impact on it or create any restriction or liability on it. Therefore, the Company is not required to disclose the same under the SEBI LODR.

In the circumstances, the Company is in the process of availing its legal remedies to challenge the said SEBI Letter by filing appropriate legal proceedings, in accordance with law. We have full faith in the judiciary to receive justice and relief that the Company deserves.

For Kirloskar Pneumatic Company Limited

Jitendra R Shah
Company Secretary
Membership No. 17243

Encl.: As above

Kirloskar Pneumatic Company Limited

A Kirloskar Group Company

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Pune, Maharashtra 411013
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**CORPORATION FINANCE DEPARTMENT
DIVISION OF SUPERVISION, ENFORCEMENT AND COMPLAINTS - 4**

SEBI/HO/CFD/SEC-4/OW/P/2024/39885/1
December 30, 2024

**Kirloskar Pneumatic Company Ltd
Represented by its Company Secretary, Shri Jitendra R Shah
Plot No. 1, Hadapsar Industrial Estate, Hadapsar
Pune, Maharashtra, 411013**

Subject : Non- Disclosure of Deed of Family settlement (DFS) under Regulation 30A of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 by Kirloskar Pneumatic Company Ltd – Decision on the Representation filed by Kirloskar Pneumatic Company Ltd in compliance with Order dated October 21, 2024 passed by the Hon'ble Securities Appellate Tribunal in Appeal no. 604/2024 & Misc. App. No. 1095/2024 and 1096/2024 (Kirloskar Pneumatic Company Ltd vs. Securities and Exchange Board of India), and other tagged matters

Background

1. In pursuance to the following communications impugned before Securities Appellate Tribunal ('SAT') wherein the advisory to disclose the Deed of Family Settlement ('DFS') within 7 days from the receipt of communication was issued by SEBI as under-

- 1.1. Email dated October 7, 2024 to Kirloskar Oil Engines Limited ('KOEL');
- 1.2. Email dated October 9, 2024 to Kirloskar Industries Limited ('KIL'), Kirloskar Ferrous Industries Limited ("KFIL") and Kirloskar Pneumatic Company Limited ("KPCL"); and
- 1.3. Email dated October 14, 2024 to G.G. Dandekar Properties Limited.

2. SAT, vide Order dated October 21, 2024 passed in the matter of *Kirloskar Oil Engines Limited vs. Securities and Exchange Board of India*, and other tagged matters, disposed off the appeals after recording the submissions of the parties that the appellants would file representation within four weeks with SEBI and that SEBI shall hear and dispose of the said representations within six weeks therefrom.

Representation received from KPCL through its Company Secretary, Shri Jitendra R Shah

- 2.1. *SEBI communication (i) bad in law and ignores the settled principles of law, (ii) violates principles of natural justice, (iii) exceeds the scope of Regulation 30A of the SEBI LODR Regulations, (iv) shows the biased and arbitrary conduct of SEBI towards KPCL, and (v) is likely to cause grave prejudice to KPCL if not set aside.*
- 2.2. *The DFS was entered into amongst certain members of the Kirloskar family in their individual capacities and each representing their respective family branches. The parties to the DFS were careful enough to obtain letters of adherence from all individual members of their respective family branches (including on behalf of a minor) at the time of execution of the DFS, who they intended to be bound by the DFS. It is also pertinent to note that the parties to the DFS conspicuously left out the companies and choose neither to have the DFS ratified by the companies or obtain letters of adherence (similar to those obtained from the individuals) from the companies, thereby unequivocally bringing out the intent that the DFS was intended to only bind individual family members in their personal capacity and not any company. Neither KPCL nor any other company was a party to the said DFS nor has KPCL signed, nor has KPCL's Board of Directors ratified or adopted the said DFS or has in any manner agreed to be bound by the same. Therefore, the DFS is not binding on KPCL.*
- 2.3. *Pursuant to the LODR Amendment 2023 coming into effect, the Board of Directors of KPCL received a letter dated July 27, 2023, from Mr. Atul Kirloskar and Mr. Rahul Kirloskar, promoters of KPCL. Under the said letter, it was reiterated that the DFS was entered amongst certain family members of the Kirloskar family in 2009, in their individual capacity. The Board of Directors of KPCL were further informed that the purpose of the DFS was to essentially distribute shares held by various family members inter-se amongst themselves, on the terms contained therein. The said letter further stated that the distribution of the shares was completed soon after the execution of the DFS and the DFS does not have any impact on the management or control of KPCL and no*

actions are required to be taken by KPCL under the SEBI LODR Regulations in respect of the same.

2.4. Thereafter, on July 31, 2023, KPCL received a letter from Mr. Sanjay Kirloskar calling upon KPCL to inter alia disclose the DFS under Regulation 30A read with Clause 5A of Para A of Part A of Schedule III of the SEBI LODR Regulations.

2.5. The aforesaid letters were placed before the Board of Directors (BoD) of KPCL and BoD of KPCL determined, concluded and inter-alia noted as follows:

2.5.1. KPCL received queries from SEBI in May 2020 seeking explanations with respect to the non-disclosure of the DFS to the stock exchange under the SEBI LOOR Regulations. KPCL had provided its response inter alia informing SEBI that KPCL had neither entered into the DFS nor has KPCL been made a party to the same and KPCL, has not in any manner recognized, ratified or adopted the DFS at any stage.

2.5.2. KPCL Board has noted from time to time that KPCL is not bound by the terms of the DFS in any manner whatsoever, since the same was a private family document and since KPCL has neither signed the DFS nor has in any manner recognized, ratified or adopted the DFS at any stage nor has KPCL been made a party to the same, the DFS is not binding on KPCL.

2.5.3. Accordingly, the DFS is not binding on KPCL. In any event, the DFS has no impact on the management or control of KPCL nor does the DFS impose any restriction or create any liability on KPCL. Therefore, in light of the provisions of law, documents on record and legal advice obtained in the matter, KPCL is not required to disclose the DFS under Regulation 30A of the SEBI LODR Regulations.

2.6. Thereafter, on May 29, 2024 KPCL along with the KPCL Board were copied on a complaint letter issued by Mr. Sanjay Kirloskar to SEBI regarding the alleged non-compliance by KPCL in relation to the non-disclosure of DFS under the SEBI LODR Regulations. Another letter was issued by Mr. Sanjay Kirloskar to SEBI on July 17, 2024, following up on his previous communication dated May 29, 2024.

2.7. *Thereafter, on September 10, 2024, KPCL received another letter from Mr. Sanjay Kirloskar having the subject line "Complaint regarding deliberate non-disclosure of material events by Kirloskar Pneumatic Company Limited in contravention of the LODR Regulations, 2015", once again attempting to force and harass KPCL to disclose the DFS under Regulation 30A of the SEBI LODR Regulations.*

2.8. *KPCL suddenly received communication dated October 7, 2024, from SEBI which was thereafter superseded by SEBI Communication, unilaterally in an ex parte action directing KPCL to disclose the DFS under Regulation 30A of the SEBI LODR Regulations, in contravention of the principles of natural justice, without having any authority or providing any basis for the conclusions arrived at in the SEBI communication and in complete ignorance of facts and contrary to law. Without prejudice to the foregoing, KPCL inter-alia stated the following in respect of the Impugned Communication:*

2.9. *KBL has no locus to file a complaint against KPCL*

2.9.1. *KPCL reiterates that during the arguments held before the Hon'ble Tribunal in the KPCL SAT Appeal on October 21, 2024, it came to light that the Impugned Communication has been issued pursuant to a complaint filed by KBL on or around September 9, 2024. However, it is pertinent to note that KBL is not a shareholder of KPCL nor is it a party to the DFS. Therefore, KBL had no locus to file any complaint with SEBI in relation to the alleged non-disclosure of the DFS by KPCL, under Regulation 30A of the SEBI LODR Regulations, or otherwise. KBL in no manner could have been aggrieved or affected by any alleged non-disclosure of the DFS by KPCL and therefore KPCL is unable to understand how the Impugned Communication could have been issued based on a complaint filed by KBL. In fact, KPCL was not even informed let alone provided a copy of the said KBL complaint at the time of issuance of the Impugned Communication or thereafter, in complete violation of the principles of natural justice.*

2.9.2. *It is further pertinent to note that SEBI in its reply filed before the Hon'ble Tribunal in Appeal No. 311 of 2021 Kirloskar Brothers Limited v. SEBI & Anr., has itself inter alia observed and submitted before Hon'ble Tribunal*

that the said communication/decision dated February 17, 2021 did not operate directly and injuriously upon the personal, pecuniary or proprietary right of KBL, and therefore, KBL could not be aggrieved by such an order. Despite concluding the same, SEBI has now entertained a similar complaint filed by KBL under the same SEBI LODR Regulations, and issued an ex parte direction especially when KBL admittedly does not have any locus to file the said complaint.

2.9.3. *Without prejudice to the foregoing, KPCL submits that the DFS is already available in the public domain, as published/disclosed by KBL itself. Therefore, no question arises for KBL to seek any further disclosure of the same by KPCL and the rationale behind seeking the said disclosure from KPCL when KBL cannot be "aggrieved" by the non-disclosure, is unclear. On this ground alone, SEBI ought to have dismissed the complaint filed by KBL and exemplary costs should have been imposed on KBL for repeatedly attempting to misuse SEBI's regulatory machinery to fight vexatious complaints and further the ulterior motive of its Chairman and Managing Director, Mr. Sanjay Kirloskar. It is submitted that despite KBL not being a shareholder of KPCL or a party to the DFS or otherwise an aggrieved party, KBL's frivolous complaints since 2018 show that KBL has been and continues to incur significant costs and expenses (through deploying resources of public shareholders) for ventilating private disputes of Mr. Sanjay Kirloskar, which has in fact been recognized by SEBI itself.*

Other grounds of Challenge to the Impugned Communication

2.10. *Impugned Communication is contrary to the principles of natural justice and issued without application of mind*

2.10.1. *KPCL first received a communication from SEBI on October 7, 2024 at 4:45 p.m. addressed to the Company Secretary of KPCL, having the subject line "Advisory to Disclose the Deed of Family Settlement (DFS) under Regulation 304 of SEBI (Listing Obligations and Disclosure Requirements). Regulations. 2015". Under the said communication, SEBI inter-alia stated the following*

"1.This is with reference to the matter of disclosure of deed of family settlement (DFS). The DFS was examined by us and the following is noted:

- 1.1.No specific expiration term has been provided in the DFS.*
- 1.2.Clause 15 of DFS provides for a non-compete clause and inter-alia reads as under- 'No party shall do or omit to do any act, deed or thing, which will cause damage to the name and reputation of Kirloskar including engaging in a directly competitive business....'*
- 1.3.The said non-compete clause between the parties to DFS would extend to the listed entities controlled by them as the DFS was executed for the purpose of transfer of the ownership, management and control of different business amongst the Kirloskar family members.*
- 1.4.The aforesaid clause appears to impose restrictions on KOEL that it cannot engage in a business similar to KBL or other entities managed by the parties to DFS and would fall within the ambit of the explanation to Clause 5A of LODR.*
- 1.5.In view of the above, the DFS is subsisting created a restriction on the listed entities managed/controlled by the parties to such DFS and thus would require disclosure in terms of Regulation 30A read with Clause SA of Para A of Part A of Schedule III of SEBI (LODR Regulations. 2015:*
- 1.6.Considering KIL, KFIL, and KPCL are also party to the DFS, the aforesaid requirement to disclose the DFS are applicable to them. Therefore, the companies are hereby advised to make the disclosure of DFS within 7 days from the receipt of the email."*

2.10.2. The said communication unilaterally stated that the said non-compete clause between the parties to the DFS would extend to the listed entities controlled by them as the DFS was executed for the purpose of transfer of the ownership, management and control of different business amongst the Kirloskar family members. It was further stated that the said clause appears to impose restrictions on KPCL that it cannot engage in

a business similar to KBL or other entities managed by the parties to DFS and would fall within the ambit of the explanation to Clause 5A of SEBI LODR Regulations. Accordingly, KPCL, KPCL and KPCL. were unilaterally considered to be parties to the DFS and were advised to disclose the DFS under Regulation 30A of the SEBI LODR Regulations within 7 (seven) days. The said communication dated October 7, 2024, does not even draw a co-relation to the alleged non-compete referred to, in relation to KOEL and KPCL and the other entities referred therein.

2.10.3. *Thereafter, in an apparent after-thought to rectify its own errors, on October 9, 2024, SEBI sent another email to KPCL drawing reference to KPCL.*

2.10.4. *The manner in which the aforesaid communications have been sent by SEBI show that SEBI has acted in a haphazard and clandestine manner without proper application of mind and has attempted to issue directions to KPCL hurriedly, for reasons best known to SEBI.*

2.10.5. *Further, while the Impugned Communication is titled as an "Advisory, KPCL, has been directed to file a time-bound disclosure of the DFS under Regulation 30A of the SEBI LODR Regulations within a period of 7 (seven) days, which would amount to an ex-parte order or direction and not a mere advisory.*

2.10.6. *The said time-bound order is in complete violation of law and the principles of natural justice since SEBI Communication has been issued ex-parte and without providing KPCL any opportunity to present its case or put forth its stance on the matter.*

2.10.7. *It was only after KPCL was constrained to approach the Hon'ble Tribunal that SEBI has offered to hear KPCL in respect of the SEBI Communication and pass an order in respect of the same, instead of first issuing a show-cause notice to KPCL. This itself demonstrates that such an opportunity of hearing will be a post decisional opportunity since SEBI has already made up its mind as recorded in the SEBI Communication and such a hearing would be a mere formality, which is contrary to the principles of natural justice.*

- 2.10.8. *SEBI is well aware that issues pertaining to the interpretation of Clause 15 of the DFS are pending before the Civil Court, Pune in a Special Civil Suit No. 798 of 2018 - Sanjay Chandrakant Kirloskar & Anr. v. Atul Chandrakant Kirloskar & Ors. ("Pune Suit") initiated by KBL and Mr. Sanjay Kirloskar against KOEL and others (including promoters of KPCL).*
- 2.10.9. *KPCL understands that on June 5, 2018, KBL and Mr. Sanjay Kirloskar filed the Pune Suit inter alia, seeking specific performance of the DFS. The main contention in the said Pune Suit is that Clause 15 of the DFS is an alleged non-compete clause and the Kirloskar family members who have signed the DFS have breached the same by causing KOEL, a company under their control, to compete with KBL.. Therefore, the main dispute and issues raised by Mr. Sanjay Kirloskar and KBL pertaining to the terms of the DFS including the alleged non-compete therein and the DFS being binding on Kirloskar companies, is pending before the Pune Civil Court since 2018.*
- 2.10.10. *KPCL further referred the affidavit filed by SEBI on June 29, 2021 before the Hon'ble Tribunal, wherein SEBI inter-alia stated the following:*
- 1.6.1.1. *Appellant (KBL) has already taken legal recourse and is pursuing its grievance in respect of the material and significant issue (being the purported non-adherence by Respondent No. 2 of the Deed of Family Settlement dated 11 September 2009 ("said DFS")) before the appropriate civil forum, which is still under consideration.*
- 1.6.1.2. *Appellant's actions of approaching this Hon'ble Tribunal and/or this Respondent (i) are not bona fide; and (iii) seek to obtain orders in respect of private disputes between the Appellant and Respondent No. 2.*
- 1.6.1.3. *The recourse available to the Appellant for any violation of the said DFS and/or any other agreement/ contract by Respondent No. 2 is by approaching the relevant judicial fora, which the Appellant has in fact done by way of its Special Civil Suit No. 798 of 2018, which is presently pending before the Hon'ble Civil Judge, Senior Division,*

Pune. It is respectfully submitted that neither this Hon'ble Tribunal and/or this Respondent are the appropriate authority for redressal of the Appellant's grievance regarding the purported violation of the said DFS.

1.6.1.4. It was/ is irrelevant to take note of with whom the ownership, management and control of Respondent No. 2 vested/vests in. Moreover, this Respondent is not concerned with a private dispute about who has acted upon and/or received benefits under the said DFS; and it is always open for the Appellant to independently challenge the same before the appropriate judicial for a, which it has already done.

Therefore, SEBI has in the past, rightly refrained from getting involved in the dispute of interpretation of the DFS especially Clause 15 thereof.

2.10.11. However, SEBI, has now taken a complete u-turn and has decided to embark on a misadventure of interpreting the provisions of the DFS. Despite knowing that the matter is sub judice, has unilaterally adjudicated that KPCL is a party to the DFS. The DFS contains an alleged non-compete clause and the same appears to impose restrictions on KPCL that it cannot engage in a business similar to KBL or other entities managed by the parties to DFS and would fall within the ambit of the explanation to Clause 5A of SEBI LODR Regulations.

2.10.12. There is absolutely no basis or reasoning provided for the same by SEBI and SEBI has simply by way of an ex-parte order thrusting the aforesaid determination on KPCL and has directed KPCL to make a disclosure of the DFS under Regulation 30A. This shows a complete violation of the principles of natural justice, and arbitrariness on part of SEBI.

2.10.13. Therefore, SEBI has gone beyond the scope of the SEBI LODR Regulations and Regulation 30A therein, and its powers, and has suo moto assumed the role of a civil court and an adjudicator and has muddled itself in interpreting and adjudicating upon the disputed provisions of the DFS, which is a private contract amongst certain

individuals, in favour of one party and against KOEL and contrary to its own stand previously taken on oath, and even the SEBI's communication/decision dated February 17, 2021.

2.11. *The matter pertaining to the disclosure of the DFS has already been decided and SEBI is estopped from issuing the SEBI Communication*

2.11.1. *SEBI by the letter dated February 17, 2021 has conclusively decided that the DFS is a private family arrangement and does not bind KOEL, a listed company, as it is not a party to the said document.*

2.11.2. *In fact, the very grounds on which SEBI has now issued the SEBI Communication, are the very same grounds on which SEBI refrained itself from interfering in 2021 as the subject matter of the same is sub judice before the appropriate civil court/arbitrator (as the DFS has an arbitration clause) and SEBI is not the correct forum to adjudicate the said dispute.*

2.11.3. *An amendment to the SEBI LODR Regulations does not affect the factual and legal status that KPCL is not bound by the DFS or SEBI suddenly becomes the forum and assumes powers to adjudicate a private sub-judice lis. SEBI cannot approbate and reprobate and the stand taken by SEBI in February 2021 cannot change in October 2024 merely because there was an amendment to the law. The amendment, by its very nature, applies to cases where a listed company has agreed to certain covenants under a family settlement or arrangement. In the present case, ex facie, no such agreement has been entered into by the listed company (i.e., KPCL) nor has the listed company (KPCL) agreed to be bound by the terms of the same.*

2.11.4. *In any event whether KPCL can at all be bound by a promise made by its promoters to their siblings or family members in a deed of family settlement where KPCL was not made a party, is anyway a subject matter of the Pune Suit before the Pune trial court/arbitration proceedings (depending upon the outcome before the Hon'ble Supreme Court).*

2.11.5. *In view of the same, without prejudice to the fact that KPCL is not bound by the DFS, it is submitted that the decision of SEBI to direct (under the garb of an advisory) KPCL to make a disclosure of the DFS even though*

there is an active lis between the parties about the binding nature of the DFS on KPCL, is unlawful. On this ground alone, the Impugned Communication is liable to be set aside.

2.12. *SEBI Communication is contrary to settled principles of law*

2.12.1. *SEBI Communication tantamount to SEBI interpreting the DFS which is beyond the scope and powers of SEBI under the Securities and Exchange Board of India Act, 1992 as well as the SEBI LODR Regulations. SEBI is a regulatory authority established for the protection of investors and does not have the power to suo-moto analyse and interpret disputed agreements entered between parties in their individual and personal capacity, especially in the absence of any proceedings before the regulator. Any disputed documents or agreements are only to be adjudicated by a civil court/arbitrator (as the DFS has an arbitration clause) in accordance with the provisions of the Code of Civil Procedure, 1908 and the Indian Contract Act, 1972 and KPCL is unable to fathom how SEBI has assumed the role of a civil court/arbitrator and suo moto come to the specific conclusion that KPCL is a party to the DFS and that the DFS contains a non-compete clause to which KPCL is bound to without it being a party to the same, ratifying the same or otherwise agreeing to be bound by the same.*

2.12.2. *SEBI has while exceeding its powers and despite having no authority has, in the Impugned Communication incorrectly and without providing any rationale or cogent concluded the existence and enforceability of a purported non-compete clause (Clause 15 of the DFS) amongst the parties to the DFS (who were individual family members) and further erroneously concluded that the same would extend to the listed entities controlled by them as the DFS was executed for the purpose of transfer of the ownership, management and control of different business amongst the Kirloskar family members.*

2.12.3. *Further, the SEBI Communication goes on to erroneously determine that Clause 15 of the DFS appears to impose restrictions on KPCL or other entities managed by the parties to DFS and would fall within the ambit of the explanation to Clause 5A of the SEBI LODR Regulations.*

- 2.12.4. *The view taken by SEBI that the DFS and any purported restrictions therein, will automatically extend to KPCL even without it agreeing to be bound by the same, is completely contrary to the said legal principles and KPCL's legal rights, and is bad in law, without authority, and hence is liable to be set aside.*
- 2.12.5. *SEBI has failed to appreciate that KPCL Board has considered the matter pertaining to the DFS and concluded that the (i) DFS does not have any impact on the management or control of KPCL nor does it create any restriction on liability on KPCL, and (ii) KPCL has neither signed, ratified or agreed to be bound by the DFS nor has the same been incorporated in the Articles of Association of KPCL, and therefore, the same is not binding on KPCL.*
- 2.12.6. *SEBI has unilaterally, arbitrarily and contradicted its own findings in the SEBI Communication/Decision dated February 17, 2021, and SEBI Affidavit dated June 29, 2021, issued the subject SEBI Communication. Further, SEBI has completely ignored that the legal validity and enforceability of the purported non-compete clause under the DFS is itself under question in the aforementioned Suit*
- 2.12.7. *SEBI Communication does not protect the interests of any bona fide public shareholders but may actually become a weapon in the hands of Mr. Sanjay Kirloskar or KBL against KPCL, which will be later misused in the pending dispute in the Pune Civil Court regarding the interpretation of the DFS, SEBI has for reasons best known to it chosen to issue the Impugned Communication in an arbitrary manner in support of the mala fide intent of Mr. Sanjay Kirloskar.*
- 2.12.8. *Further, such a misleading disclosure by KPCL, if required to be made by KPCL when KPCL is actually not bound by the DFS will not only be contrary to the rights and interests of KPCL but also against the interests of all the public shareholders of KPCL. Moreover, the disclosure of the DFS under Regulation 30A will cause unwarranted market fluctuation and uncertainty in the minds of the investors, resulting in market chaos.*
- 2.13. *SEBI Communication is biased and agitates the personal dispute of Mr. Sanjay Kirloskar and KBL*

- 2.13.1. *SEBI has failed to appreciate that on June 5, 2018, KBL and Mr. Sanjay Kirloskar filed the Pune Suit inter alia, seeking specific performance of the DFS. The main contention in the said Suit is that Clause 15 of the DFS is an alleged non-compete clause and the Kirloskar family members who have signed the DFS have breached the same by causing KOEL, a company under their control, to compete with KBL. Therefore, the main dispute and issues raised by Mr. Sanjay Kirloskar and KBL pertaining to the terms of the DFS including the alleged non-compete therein and the DFS being binding on Kirloskar companies, is pending before the Pune Civil Court since 2018.*
- 2.13.2. *Since Mr. Sanjay Kirloskar and KBL have been unable to obtain any interim or final reliefs in the said Suit till date, the same is purported to be done indirectly by filing frivolous complaints before SEBI, by somehow forcing and arm-twisting KPCL to disclose the DFS under the SEBI LODR Regulations so that the same becomes binding on KPCL and other Kirloskar companies as Regulation 30A requires "disclosure of agreements binding listed entities".*
- 2.13.3. *KBL through its advocates attempted to intervene in the KPCL SAT Appeal on the ground that the Impugned Communication has been issued pursuant to KBL's said complaint (however the said request for intervention was rejected by the Hon'ble Tribunal).*
- 2.13.4. *Mr. Sanjay Kirloskar, has inter-alia alleged that Clause 15 of the DFS casts a restriction on KPCL to not engage in directly competitive business and therefore KPCL is required to disclose the DFS under Regulation 30A of the SEBI LODR Regulations. Therefore, SEBI has conveniently chosen to apply this purported non-compete clause to KPCL specifically to address the vendettas of Mr. Sanjay Kirloskar rather than taking a non-biased stand.*
- 2.13.5. *In light of the foregoing, KPCL humbly prays that:*
- (i) The SEBI Communication be set aside.*
 - (ii) A direction be passed by SEBI that KPCL is not required to disclose the DFS under Regulation 30A read with Clause 5A of Para A of Part*

A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, or otherwise.

- (iii) Declare that the complaints filed by Mr. Sanjay Kirloskar and KBL against KPCL in this regard are dismissed.*
- (iv) Exemplary costs be imposed on Mr. Sanjay Kirloskar and KBL for filing frivolous complaints against KPCL.*
- (v) Pass such other and further orders as SEBI may deem fit in the nature and circumstances of this case.*

Your authorised representatives (AR) appeared for the hearing on November 27, 2024. During the course of the hearing, the ARs reiterated the submissions made in your representation dated November 18, 2024 and were allowed liberty to file additional submissions by December 2, 2024.

Additional submission submitted vide email dated December 02, 2024

3. Subsequent to the hearing, vide email dated December 02, 2024, you had submitted the additional submissions inter-alia stating the following:

- 3.1. *KPCL adopts the submissions made by Kirloskar Oil Engines Limited and Kirloskar Company Limited as regards the following: (i) the challenge to the jurisdiction of the Ld. SEBI Officer to hear the captioned matter; (ii) requirements for disclosure of only those agreements under Regulation 30A that are binding on the listed entities; (iii) SEBI's failure to appreciate that KPCL and other Kirloskar companies are not a party to the DFS; (iv) principles of privity of contract; (v) SEBI cannot re-write the contract entered between parties; (vi) Section 179 of the Companies Act, 2013 that entrusts the Board of Directors of a company with the powers of management of the company; (vii) SEBI cannot approbate and reprobate and entrench upon the jurisdiction of the civil court; (viii) various judgments relied upon by Kirloskar Oil Engines Limited during the hearing held on July 27¹, 2024 (ix) DFS is already in the public domain and therefore, the sole intention of the complaint filed either by KBL or*

¹ Read as Nov 27, 2024

Mr. Sanjay Kirloskar is to make SEBI a tool to settle scores in a private family dispute.

3.2. For the sake of brevity, the said submissions are not being reproduced again and it is submitted that they be treated as a part of the present submissions as if the same were reproduced in extenso. Further, the said submissions and the submissions made by KPCL in its Representation are in the alternative and without prejudice to each other.

Consideration of issues and findings

4. Based on your representation, oral submissions made during the hearing and additional submissions made, the following issues arise for consideration in the present proceedings:

- 4.1. Whether the undersigned is the competent authority to hear and decide on the present matter;
- 4.2. Whether DFS is subsisting as on the date of notification of Regulation 30A of LODR;
- 4.3. Whether DFS has any impact on the management and control of the listed entity or impose any restriction or create any liability upon the listed entity (KPCL) as on date and therefore binding the listed entity;
- 4.4. Whether the same warrants disclosure under Regulation 30A of LODR; and
- 4.5. Whether the interpretation of DFS would fall under the purview of SEBI, given the contention that the issues related to DFS are pending before Pune Civil Court.

5. Each of the above issues have been examined in light of the submissions made by the company (KPCL) as under-

Whether the undersigned is the competent authority to hear and decide on the present matter

- 5.1. Before adverting to the issues raised for determination, the preliminary objection has been raised with respect to the undersigned not having jurisdiction to deal with the representation in the matter. In this regard, the Order dated October 21, 2024 passed by SAT is referred. The said Order records the submissions made by SEBI's Senior Advocate that SEBI would

hear and dispose of the representation of KPCL after affording opportunity of hearing.

- 5.2. In the interest of principles of natural justice, you (KPCL) were afforded an opportunity of hearing on November 27, 2024 before the undersigned, who was duly authorised to consider and dispose off your representation. However, you had submitted that a delegated authority does not have the powers of sub-delegation under the Securities and Exchange Board of India Act, 1992 ("SEBI Act"). You had sought a copy of the Delegation of Powers Order passed by SEBI in the matter and the name and designation of the competent authority, prior to scheduling any hearing in the matter. You had further informed that your authorised representative would be appearing in the matter without prejudice to the objection and under protest.

- 5.3. Consideration of your representation is not a quasi-judicial proceeding. The undersigned being General Manager and Division Chief of Division of Supervision, Enforcement and Complaints - 4 in Corporation Finance Department of SEBI had been duly authorized by the competent authority, being the Whole-Time Member of SEBI in charge of the Corporation Finance Department, as per the internal process, to deal with your representation and dispose the representation in compliance with the directions of SAT. Further, the Order of the SAT allowed SEBI to consider and dispose off your representation after affording opportunity of hearing. Hence, there is no prejudice caused to you.

Whether DFS is subsisting to the listed entity as on the date of notification of Regulation 30A of LODR

- 5.4. Since the matter pertains to the alleged non-disclosure of DFS in compliance with the Regulation 30A of LODR read with Clause 5A of Schedule III Part A Para A of LODR and SEBI Circular dated July 13, 2023, the said provisions are reproduced below for reference:

"Disclosure requirements for certain types of agreements binding listed entities:

30A.(1) All the shareholders, promoters, promoter group entities, related parties, directors, key managerial personnel and employees of a listed entity or of its holding, subsidiary and associate company, who are parties to the agreements specified in clause 5A of para A of part A of schedule III to these regulations, shall inform the listed entity

about the agreement to which such a listed entity is not a party, within two working days of entering into such agreements or signing an agreement to enter into such agreements:

Provided that for the agreements that subsist as on the date of notification of clause 5A to para A of part A of schedule III, the parties to the agreements shall inform the listed entity, about the agreement to which such a listed entity is not a party and the listed entity shall in turn disclose all such subsisting agreements to the Stock Exchanges and on its website within the timelines as specified by the Board.

(2) The listed entity shall disclose the number of agreements that subsist as on the date of notification of clause 5A to para A of part A of schedule III, their salient features, including the link to the webpage where the complete details of such agreements are available, in the Annual Report for the financial year 2022-23 or for the financial year 2023-24.

Schedule III Part A Para A:

(5A) Agreements entered into by the shareholders, promoters, promoter group entities, related parties, directors, key managerial personnel, employees of the listed entity or of its holding, subsidiary or associate company, among themselves or with the listed entity or with a third party, solely or jointly, which, either directly or indirectly or potentially or whose purpose and effect is to, impact the management or control of the listed entity or impose any restriction or create any liability upon the listed entity, shall be disclosed to the Stock Exchanges, including disclosure of any rescission, amendment or alteration of such agreements thereto, whether or not the listed entity is a party to such agreements:

Provided that such agreements entered into by a listed entity in the normal course of business shall not be required to be disclosed unless they, either directly or indirectly or potentially or whose purpose and effect is to, impact the management or control of the listed entity or they are required to be disclosed in terms of any other provisions of these regulations.

Explanation: For the purpose of this clause, the term "directly indirectly" includes agreements creating obligation on the parties to such agreements to ensure that listed entity shall or shall not act in a particular manner"

SEBI Circular dated July 13, 2023

Details to be provided while disclosing events given in Part A of Schedule III of the LODR Regulations

The aforesaid Circular inter-alia specified the following disclosure:

- a) *if the listed entity is a party to the agreement,*
 - i. *details of the counterparties (including name and relationship with the listed entity);*
- b) *if listed entity is not a party to the agreement,*
 - ii. *name of the party entering into such an agreement and the relationship with the listed entity;*
 - iii. *details of the counterparties to the agreement (including name and relationship with the listed entity)*
 - iv. *date of entering into the agreement.*
- c) *purpose of entering into the agreement;*
- d) *shareholding, if any, in the entity with whom the agreement is executed;*
- e) *significant terms of the agreement (in brief);*
- f) *extent and the nature of impact on management or control of the listed entity;*
- g) *details and quantification of the restriction or liability imposed upon the listed entity;*
- h) *whether, the said parties are related to promoter/promoter group/ group companies in any manner. If yes, nature of relationship;l)*

5.5. Regulation 30A read with Clause 5A of para A of part A of Schedule III states that disclosure with respect to subsisting agreement would have to be made, if any of the conditions, as mentioned in Clause 5A to para A of part A of Schedule III are met.

5.6. Clause 5A inter-alia provides for such type of agreement which either directly or indirectly or potentially or whose purpose and effect is to:

- (i) Impact the management or control of the listed entity, or
- (ii) Impose any restriction on the listed entity, or;
- (iii) To create any liability upon the listed entity.

5.7. In this regard, the following clauses of the DFS have bearing on the issue at hands and the same are reproduced hereunder for ready reference

“2. It is broadly agreed that the family settlement shall be effected in such a manner that the ownership, management and control (to the extent of Kirloskar family's

interest therein) shall be passed to the Party specified in Schedule II hereto in respect of companies mentioned under/against their respective names to the extent mentioned therein.

.....

.....

15. No party shall do or omit to do any act, deed or thing which will cause damage to the name and reputation of "Kirloskar" including engaging in a directly competitive business and shall strive to being in efficiency, competence and innovation in the business run by him, so as to enhance the brand "Kirloskar". The parties also agree to co-operate with each other to ensure smooth implementation of this settlement and agree to do such things and acts and sign such deeds and documents as may be necessary or expedient to give effect to the provisions of this DFS.

16. On the completion of all actions as envisaged in this DFS, the parties agree that the settlement is fair and equitable to all concerned and that they or anyone claiming under or through them shall not have any claim or dispute against each other in future in this regard.

17. If any provision of this DFS is held or found to be unenforceable, illegal or void, all other provisions will nevertheless continue to remain in full force and effect. The parties shall nevertheless be bound to negotiate and settle a further provision to this DFS in place of the provision which is held or found to be unenforceable, illegal or void, to give effect to the original intention of the parties and which would be enforceable, legal and valid.

.....

.....

20. Any issue arising out of this DFS including schedules thereto shall be resolved, as far as possible, unanimously. If there is no unanimity, the issue will be referred to two arbitrators, namely, Shri Anil N Alawani and Shri Chandrashekhar Naniwadekar, whose decision will be final and binding. If there is difference of opinion between the two, the matter will be referred to Shri Shrikrishna N Inamdar, whose decision shall be final and binding.

Provided that the said arbitrators shall not entertain any disputes or claims under this DFS, save and except under Clause 13 hereof, after expiry of 3 years from the date of this DFS or dissolution of BVH and Asara, whichever is later."

- 5.8. The said DFS was entered into and executed in the year 2009 for the purpose of transfer of the ownership, management and control of different businesses amongst the Kirloskar family members and all the transfers under the said DFS were effected prior to 2015, i.e., before the LODR Regulations, 2015 came into force.
- 5.9. However, the respective parties to the DFS continue to derive their respective rights from the DFS itself, and no specific expiration term has been provided in the DFS. Further, there are clauses in the DFS, which are perpetual in nature, such as the requirement for the signatories to maintain the reputation of the Kirloskar brand (clause 15), to not compete in similar lines of business (clause 15 noted above), to negotiate and settle a further provision to this DFS in place of the provision which is held or found to be unenforceable, illegal or void (clause 17 noted above), to submit the issues arising out of the DFS to arbitration (clause 20 noted above).
- 5.10. Further, no document have been furnished to claim that the said DFS is rescinded or made invalid. Additionally, Mr. Sanjay Kirloskar/KBL had filed Special Civil Suit in 2018 before the Hon'ble Civil Judge, Senior Division Pune, inter-alia, seeking the specific performance of the said DFS and same is pending which also shows that the DFS is subsisting. Further, it is also clear that the DFS is being treated as a subsisting agreement by the parties.
- 5.11. Thus, the said DFS shall be considered as a subsisting agreement as on the date of notification of Clause 5A of para A of part A of Schedule III of the LODR Regulations, 2015.

Whether DFS has any impact on the management and control of the listed entity or impose any restriction or create any liability upon the listed entity (KPCL) as on date and therefore binding the listed entity

- 5.12. From the SEBI Board memorandum on the subject 'Strengthening corporate governance at listed entities by empowering shareholders - Amendments to the Securities and Exchange Board of India (Listing Obligations and

Disclosure Requirements) Regulations, 2015² by which the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 were approved, it was observed that there had been instances wherein promoters had entered into binding agreements with third parties having an impact on the management or control of a listed entity or such agreements had placed certain restrictions on the listed entity. However, these facts were neither disclosed to the listed entity nor to its shareholders. Non-disclosure of material information creates information asymmetry and results in significant market reaction when it is known to the public at large at a later stage.

5.13. Therefore, in order to ensure timely disclosure of certain types of agreements that impact management or control of a listed entity or impose any restriction or liability upon a listed entity, the disclosure have been prescribed under Regulation 30A read with Clause 5A of para A of part A of Schedule III of the LODR Regulations, 2015.

5.14. In the instant matter, Clause 15 of DFS provides for a non-compete clause and inter-alia reads as under:

"No Party shall do or omit to do any act, deed or thing which will cause damage to the name and reputation of "Kirloskar" including engaging in a directly competitive business...."

5.15. In this regard, the said non-compete restriction between the parties (promoters and Chairman of the listed entity) to DFS would extend to the listed entities promoted by them as the DFS was itself executed for the purpose of transfer of the ownership, management and control of different businesses (including that of listed entities) amongst the Kirloskar family members.

5.16. In view of the same, the aforesaid clause imposes restrictions on KPCL in a sense that it cannot engage in a business similar to other entities managed by the parties to DFS. Since the promoters of the listed entities have agreed (in their individual capacities) to be bound by the non-compete clause, the non-compete clause in the DFS therefore indirectly imposes a restriction on

² https://www.sebi.gov.in/sebi_data/meetingfiles/apr-2023/1681703127125_1.pdf

the listed entity, even though the listed entity is itself not a signatory to the DFS. It is submitted that the same would also fall within the ambit of the Explanation to Clause 5A which provides that the term “directly or indirectly” includes agreements creating obligation on the parties to such agreements to ensure that listed entity shall or shall not act in a particular manner.

- 5.17. It may be stated that the instant DFS, which is subsisting, indirectly creates a restriction on the listed entities managed/promoted by the parties to such DFS, regardless of whether such listed entity is a party to the agreement or not.
- 5.18. A contention has been made that SEBI having taken a view earlier is estopped from taking any other view now. In this regard, it should be noted that the previous view taken by SEBI and upheld by the SAT Order dated May 13, 2022 were in the context of the pre-amended LODR Regulations. With change in law, the circumstances also change. Hence, this submission has no merit.

Whether the same warrants disclosure under Regulation 30A of LODR

- 5.19. The purpose of mandating disclosure of agreements placing restrictions on the listed entity is to ensure that the information symmetry in the market so that shareholders can take informed decision. The disclosure obligation also applies regardless of whether the listed entity is a party.
- 5.20. In the instant matter, Kirloskar Brothers Limited (KBL) has already made the disclosure of DFS on August 14, 2023 (i.e. within the timeline provided in the Amendment Regulations notified on July 15, 2023). It may be seen that the (disclosure of DFS) is already available in the public domain. However, it may be noted that an entity (under the mandate of disclosure under Regulation 30A read with Clause 5A of the LODR Regulations) which is under obligation to disclose shall also disclose such agreement in compliance.
- 5.21. If entities resort to interpreting the documents for the purpose of disclosure, it becomes muddled, as different parties will interpret the documents and their relativity to the public or investors in their own ways leading to all round confusion and throw out regulatory certainty, which is a cardinal requirement for an effective regulatory regime.

- 5.22. In view of the forgoing, since it is determined above that the DFS is subsisting and creates a restriction on the listed entity, since disclosure is mandated in terms of Regulation 30A read with Clause 5A of para A of part A of Schedule III of the LODR Regulations, the disclosure of DFS is warranted accordingly under the aforesaid provisions.

Whether the interpretation of DFS would fall under the purview of SEBI, given that the issues related to DFS are pending before Pune Civil Court.

- 5.23. SEBI has jurisdiction over the listed entities pertaining to matters under its domain. Accordingly, in exercise of the powers conferred by section 11, sub-section (2) of section 11A and section 30 of the Securities and Exchange Board of India Act, 1992 read with section 31 of the Securities Contracts (Regulation) Act, 1956, SEBI has made the LODR regulations which *inter-alia* specifies disclosure requirements by the listed entities (including but not limited to the disclosures mandated under regulation 30A read with clause 5A of the LODR Regulations). SEBI administers the LODR Regulations. Hence, it would be incumbent on the part of SEBI to determine whether the DFS is an “agreement” coming within the ambit of the Regulation 30A read with Clause 5A of para A of part A of Schedule III of the LODR Regulations, to conclude whether it needs to be disclosed or not.
- 5.24. As a necessary corollary to the above, during such determination, SEBI has to examine the clauses of the DFS for the limited purpose of understanding the applicability of the relevant provisions of the LODR Regulation on the same.
- 5.25. It is noted that the Mr. Sanjay Kirloskar/KBL had filed Special Civil Suit in 2018 before the Ld. Civil Judge, Senior Division Pune, inter-alia, seeking the specific performance of the said DFS and same is pending. Your contention is that in view of the *lis* pending before the civil court, SEBI has no authority to decide whether DFS is required to be disclosed or not.
- 5.26. While you have not furnished any plaint/pleading filed before the civil court to SEBI which curtails/restricts SEBI’s powers to determine the disclosure requirements of the DFS, without prejudice to the same, from the perusal of

the website of Pune District and Sessions Court, it is noted that a petition³ as aforesaid has been filed under Sections 11, 34 and 38 of the Specific Relief Act, 1963. The said sections provide for specific performance of contracts connected with trusts, grant of declaratory decree and perpetual injunction respectively. Therefore, it is clear that the aforesaid Civil Suit is for the specific relief in respect of the DFS and it cannot be said that the question of non-disclosure of DFS and consequent violation of the relevant provisions of LODR Regulations is sub-judice before the said court. As already stated above, SEBI administers the provisions of the LODR Regulations and therefore any issue requiring determination under such regulations would be upon SEBI.

- 5.27. In view of the forgoing, and since the instant matter deals with the non-disclosure of DFS, pursuant to insertion of Regulation 30A and Clause 5A in LODR Regulations, the interpretation of the DFS would fall under the purview of SEBI, for the limited purpose of examining the applicability of the aforesaid provisions *vis-à-vis* the requirement of disclosure of DFS.
- 5.28. Considering the above, the company's contention that the interpretation of the provisions of the DFS (which admittedly are sub judice before the Pune Civil Court / arbitrator) are beyond the scope of SEBI's powers and purview under the SEBI Act and the LODR Regulations are not tenable.

Other Observations

- 5.29. It was earlier observed from the letter dated July 27, 2023 submitted by Mr. Atul Kirloskar and Mr Rahul Kirloskar to KPCL that an opinion had been obtained by them from Senior Advocate Mr. Arvind Datar in respect of the said DFS in 2017, which confirms that the DFS does not have any impact on the management or control of the Kirloskar Group Entities. The Board of the company was aware of the said opinion. However, pursuant to the amendment in LODR, any reliance placed on the opinion obtained in 2017 may not be relevant.

³ Registration Number- 798/2018; Filing Number- 4286/2018; CNR Number- MHPU020028922018

5.30. It is also relevant to note the Board positions of **Mr. Atul Kirloskar and Rahul Kirloskar, parties to the DFS**, which is as under (As per the corporate governance report):

5.30.1. Atul Kirloskar (Promoter, Chairperson of KOEL), Promoter and Chairperson of Kirloskar Industries Limited ('KIL'), Promoter of Kirloskar Ferrous Industries Limited ("KFIL"), Promoter and Non-executive director of Kirloskar Pneumatic Company Limited ("KPCL");

5.30.2. Atul Kirloskar's wife is Managing Director of KOEL;

5.30.3. Rahul Kirloskar (Promoter of KOEL, Promoter of KIL, Promoter and Chairperson of KFIL, Promoter cum Executive Director cum Chairperson of KPCL)

Considering the above, Mr. Rahul Kirloskar and Mr. Atul Kirloskar are part of the Board of Directors in respective entities.

6. In view of the above, since the DFS is subsisting in nature, indirectly creates a restriction on the listed entities managed/promoted by the parties to such DFS, warrants disclosure, regardless of whether such listed entity is a party to the agreement or not, under Regulation 30A read with Clause 5A of para A of part A of Schedule III of the LODR Regulations, 2015, you are advised to disclose the DFS in terms of LODR Regulations.

7. Accordingly, your representation dated November 18, 2024 and additional submissions dated December 2, 2024 in the matter is disposed off, in compliance with the Order dated October 21, 2024 of the Hon'ble SAT.

Yours faithfully,

DIPANJAN MITRA
N MITRA
Digitally signed by
DIPANJAN MITRA
Date: 2024.12.30
14:36:23 +05'30'

Dipanjan Mitra
General Manager