

Date: 31st December 2024

BSE Scrip Code: **533293**

To
Corporate Relationship Department
BSE Limited
1st Floor, Rotunda Building,
Dalal Street, Fort,
Mumbai – 400 001.

NSE Scrip Code: **KIRLOSENG**

To
Listing Department
National Stock Exchange of India Ltd.
Exchange Plaza, C -1, Block G,
Bandra-Kurla Complex, Bandra (E),
Mumbai – 400 051.

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

Dear Sir/ Madam,

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 Company 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.

Thanking you,
For Kirloskar Oil Engines Limited

Farah Irani
Company Secretary
Encl.: as above



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

SEBI/HO/CFD/SEC-4/OW/P/2024/39883/1
December 30, 2024

**Kirloskar Oil Engines Limited
Represented by its CFO, Shri Sachin Kejriwal
Laxmanrao Kirloskar Road
Khadki, Pune, Maharashtra, 411003**

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 Oil Engines Limited – Decision on the Representation filed by Kirloskar Oil Engines Limited in compliance with Order dated October 21, 2024 passed by the Hon'ble Securities Appellate Tribunal in Appeal no. 601/2024 & Misc. App. No. 1085/2024 and 1086/2024 (Kirloskar Oil Engines Limited 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 KOEL through its CFO, Mr. Sachin Kejriwal

3. Pursuant to the aforesaid Order of the SAT, you had filed your representation dated November 18, 2024 with SEBI, wherein you have *inter-alia* submitted the following:

- 3.1. *The impugned communication (i) is bad in law and ignores the settled principles of law, (ii) violates principles of natural justice, (iii) fails to consider and appreciate the submissions made by KOEL on facts as well as law and exceeds the scope of Regulation 30A of the SEBI LODR Regulations, (iv) shows the biased and arbitrary conduct of SEBI towards KOEL, and (iv) is likely to cause grave harm, loss and prejudice to KOEL if not set aside.*
- 3.2. *KOEL is a public listed company incorporated and existing under the laws of India since January 12, 2009, has a Board of Directors with reputed independent directors, and has thousands of public shareholders.*
- 3.3. *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 KOEL nor any other company was a party to the said DFS nor has KOEL signed, nor has KOEL'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 KOEL.*
- 3.4. *After the introduction of Regulation 30A read with Clause 5A of Para A of Part A of Schedule III of the SEBI LODR Regulations, KOEL received a letter from Mr. Atul Kirloskar and Mr. Rahul Kirloskar, promoters of KOEL on July 27, 2023, addressed to the Board of Directors of KOEL. Under the said letter, it was informed that a DFS was entered into amongst certain family members of the Kirloskar family in 2009 in their individual capacity and the primary purpose of the DFS was the distribution of*

the shares held by various family members inter-se amongst themselves, on the terms contained in the said DFS. Accordingly, the distribution of the shares was completed soon after the execution of the DFS in 2009. Therefore, the DFS does not have any impact on the management or control of KOEL and there is no action required by KOEL under Regulation 30A of the SEBI LODR Regulations in respect of the aforesaid.

3.5. Thereafter, on July 31, 2023, KOEL received a letter from Mr. Sanjay Kirloskar, promoter of KOEL, in respect of the aforementioned subject matter, calling upon KOEL to disclose the DFS under Regulation 30A of LODR Regulations.

3.6. Both the letters were placed before the Board of Directors (BoD) of KOEL and the BoD determined, concluded and inter-alia noted as follows:

3.6.1. KOEL is neither a party to the DFS nor has the DFS been signed on behalf of KOEL and nor has KOEL ratified or adopted the said DFS. Therefore, the DFS is not binding on KOEL. In any event, the DFS has no impact on the management or control of KOEL nor does the DFS impose any restriction or create any liability on KOEL.

3.6.2. Clause 5 of Para A of Part A of Schedule III of SEBI LODR 2015 only requires listed companies to make disclosures in respect of such shareholder agreement(s), joint venture agreement(s), family settlement agreement(s) that "impact management and control of the listed entity". Further, the newly introduced Clause 5A of Para A of Part A of Schedule III of SEBI LODR only requires listed entities to make disclosures in respect of those 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".

3.6.3. Therefore, based on the facts and documents placed before the Board of Directors of KOEL and the legal advice obtained in the matter¹, the Board of Directors of KOEL discussed in detail and reached a conclusion that KOEL was not required

¹ Legal opinion obtained from Senior Advocate Mr. Arvind Datar in 2017

to take the DFS on record and/or further disclose the same under Regulation 30A of the SEBI LODR Regulations.

3.7. A complaint was received from Mr. Sanjay Kirloskar relating to Non-disclosure of DFS, on which response was sought by NSE from KOEL. KOEL, vide email dated September 11, 2023 inter-alia submitted that:

3.7.1. The complaint filed by Mr. Sanjay Kirloskar is nothing but one more of his repeated attempts to try and somehow cause KOEL to be bound by the DFS (entered between the family members of the Kirloskar group in their individual capacity), for his own ulterior motives and in furtherance of his personal vendetta with the other family members, which is now public record.

3.7.2. The DFS is not binding on KOEL, and in any event the DFS has no impact on the management or control of KOEL or otherwise creates any restriction or liability on KOEL.

3.7.3. The annual filings and disclosures made by KOEL from time to time under the SEBI regulations and the Companies Act, 2013, as applicable, clearly demonstrate that there has been no change in the management or control of KOEL pursuant to the execution of the DFS.

3.7.4. As no further reply was received from NSE, it was presumed that the said matter was closed.

3.8. After 6 months, the stock exchanges further requested KOEL to submit the disclosure of DFS without any justification, vide email dated February 09, 2024. In response, vide email dated February 16, 2024, KOEL reiterated its submissions made in September 2023 and further stated that Mr. Sanjay Kirloskar has filed the complaint with unclean hands and has once again attempted to misuse the machinery of the stock exchanges for his personal ulterior motives. In view of the aforesaid facts and circumstances, KOEL submitted that KOEL is not required to make any disclosures in respect of the DFS.

3.9. Pursuant to the receipt of telephonic call from Ms. Surabhi Gupta, representative of SEBI, on March 12, 2024 KOEL immediately, issued a letter to SEBI informing of the said telephonic conversation, and inter alia re-iterating its submissions that KOEL is not required to disclose the DFS under Regulation 30A of the SEBI LODR Regulations for the reasons mentioned in the said letter.

- 3.10. *Vide letter dated September 10, 2024, Mr. Sanjay Kirloskar issued another letter addressed to the Board of Directors of KOEL, forcing KOEL to disclose the DFS under Regulation 30A of the SEBI LODR Regulations. Thereafter, on September 25, 2024, KOEL received an email from NSE requiring KOEL to provide reasons for non-disclosure of the DFS, after disposal of the appeal by the Hon'ble Supreme Court of India. In response, KOEL submitted that as the said Civil Appeal has been "withdrawn" by KBL (Mr. Sanjay Kirloskar) and there is no observation or finding in the said order dated August 6, 2024, that requires KOEL to disclose the DFS.*
- 3.11. *On October 07, 2024, KOEL received the impugned Communication from SEBI requiring KOEL to disclose the DFS under Regulation 30A of the SEBI LODR Regulations. The said Impugned Communication has been issued by SEBI contrary to the principles of natural justice, without having any authority or providing any basis for the conclusions arrived at in the said Impugned Communication and in flagrant disregard of the pertinent facts of the matter and in contravention of law and the established legal principles.*
- 3.12. *Violation of principles of natural justice*
- 3.12.1. *While the Impugned Communication is titled as an "Advisory", KOEL 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. Through this ex-parte Impugned Communication, SEBI is, in effect, unilaterally compelling KOEL to disclose the DFS under Regulation 30A of the SEBI LODR Regulations, despite being well aware of the fact that KOEL is neither a party to the DFS nor is the DFS binding on KOEL.*
- 3.12.2. *SEBI has issued the Impugned Communication without hearing KOEL, the stand taken by KOEL in the matter and without considering the facts, documents and applicable law in support thereof. Moreover, only after KOEL was constrained to approach the Hon'ble Tribunal that SEBI has offered to hear KOEL in respect of the Impugned Communication and pass an order in respect of the same, instead of first issuing a show-cause notice to KOEL. This itself demonstrates that such an opportunity will be a post decisional opportunity since SEBI has*

already made up its mind as recorded in the Impugned Communication and such a hearing would be a mere formality in violation of the principles of natural justice.

3.12.3. *Further, SEBI has gone beyond the scope of the SEBI LODR Regulations and Regulation 30A therein, and its powers. SEBI has suo moto assumed the role of a civil court and an adjudicator and has muddled itself in interpreting and adjudicating upon the 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 and even the SEBI's communication on oath and even the SEBI communication/decision dated February 17, 2021.*

3.12.4. *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. initiated by KBL and Mr. Sanjay Kirloskar against KOEL, and others ("Pune Suit").*

3.12.5. *On June 5, 2018, KBL and Mr. Sanjay Kirloskar filed the Pune Suit before the Civil Judge, Senior Division, Pune inter alia, seeking specific performance of the DFS. The main contention in the 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. Reliefs inter-alia prayed for in respect of the DFS in the Pune Suit are (i) Defendant Nos. 1 to 21 and 23 (including KOEL) be directed to specifically perform the DFS. 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, are lying pending before the Pune Civil Court since 2018. Since Mr. Sanjay Kirloskar and KBL have not been able to obtain any interim or final reliefs in the Pune Suit till date, the same is purported to be done indirectly by filing frivolous complaints against KOEL before SEBI, by somehow forcing and arm-twisting KOEL to disclose the DFS under the SEBI LODR Regulations so that the same becomes binding on KOEL as Regulation 30A requires "disclosure of agreements binding listed entities".*

3.12.6. *KOEL referred to SEBI's affidavit filed on June 29, 2021 before the Hon'ble Tribunal, wherein SEBI inter-alia stated the following:*

- a) *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.*
- b) *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 fora, 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.

3.12.7. However, SEBI, for reasons best known to it, 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 KOEL is a party to the DFS. The DFS contains an alleged non-compete clause and the same 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 SEBI LODR Regulations.

3.12.8. 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 KOEL and has directed KOEL 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. The Impugned Communication is therefore, in the teeth of the principles of natural justice, is non-est and void ab initio. The Impugned Communication ought to be set aside on this ground alone.

3.13. The matter pertaining to the disclosure of the DFS as between the parties has already been decided in 2021 and SEBI is estopped from issuing the Impugned Communication

- 3.13.1. *SEBI Communication 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.*
- 3.13.2. *In fact, the very grounds on which SEBI has now issued the Impugned 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.*
- 3.13.3. *An amendment to the SEBI LODR Regulations does not affect the factual and legal status that KOEL 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., KOEL).*
- 3.13.4. *In any event whether KOEL 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 KOEL 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).*
- 3.13.5. *In view of the same, without prejudice to the fact that KOEL is not bound by the DFS, it is submitted that the decision of SEBI to direct (under the garb of an advisory) KOEL 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 KOEL, is unlawful.*
- 3.14. *The Impugned Communication is contrary to law, facts of the matter and suffers from grave non-application of mind*
- 3.14.1. *The Impugned 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 KOEL is unable to fathom how SEBI has assumed the role of a civil court/arbitrator and suo moto come to the specific conclusion that KOEL is a party to the DFS and that the DFS contains a non-compete clause to which KOEL is bound to without it being a party to the same, ratifying the same or otherwise agreeing to be bound by the same.

3.14.2. 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.

3.14.3. The view taken by SEBI that the DFS and any purported restrictions therein, will automatically extend to KOEL even without it agreeing to be bound by the same, is completely contrary to the said legal principles and KOEL's legal rights, and is bad in law, without authority, and hence is liable to be set aside.

3.14.4. SEBI has failed to appreciate that the Board of Directors of KOEL have considered the matter pertaining to the DFS and concluded that the (i) DFS does not have any impact on the management or control of KOEL nor does it create any restriction on liability on KOEL, and (ii) KOEL has neither signed, ratified or agreed to be bound by the DFS nor has the same been incorporated in the Articles of Association of KOEL, and therefore, the same is not binding on KOEL.

3.14.5. SEBI has unilaterally, arbitrarily and contradicting its own findings in the SEBI Communication/Decision, and SEBI Affidavit dated June 29, 2021 the said subject matter is outside the purview of the SEBI, issued the Impugned 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 Pune Suit.

3.14.6. The Impugned 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 KOEL, which will be later misused against KOEL 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.

3.14.7. Further, such a misleading disclosure by KOEL, if required to be made by KOEL when KOEL is actually not bound by the DFS will not only be contrary to the rights and interests of KOEL but also against the interests of all the public shareholders of KOEL. Moreover, the disclosure of the DFS under Regulation 30A will cause unwarranted market fluctuation and uncertainty in the minds of the investors and chaos in the market.

3.15. The Impugned Communication is biased and agitates the personal dispute of Mr. Sanjay Kirloskar and KBL

3.15.1. KBL through its advocates attempted to intervene in the KOEL 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).

3.15.2. Mr. Sanjay Kirloskar, has inter-alia alleged that Clause 15 of the DFS casts a restriction on KOEL to not engage in directly competitive business and therefore KOEL 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 KOEL and has erroneously observed that KOEL cannot engage in a business similar to KBL, specifically to address the vendettas of Mr. Sanjay Kirloskar rather than taking a non-biased stand.

3.15.3. KOEL reserves its rights and contentions in the matter including challenging the constitutional validity of Regulation 30A read with Clause 5A of Para A of Part A of Schedule III of the SEBI LODR Regulations.

3.15.4. In light of the foregoing, KOEL humbly prays that:

(i) Impugned Communication be set aside.

- (ii) *A direction be passed by SEBI that KOEL 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 KBI. against KOEL in this regard are dismissed.*
- (iv) *Exemplary costs be imposed on Mr. Sanjay Kirloskar and KBL for filing frivolous complaints against KOEL.*
- (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

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

- 4.1. Jurisdictional objection: *KOEL raised a challenge to the jurisdiction of the undersigned to hear and decide the present matter, as neither the SEBI Act, 1992 nor the Delegation of Powers Order dated July 31, 2019 (DoP Order) issued by SEBI confers any such power on the undersigned.*
- 4.2. Regulation 30A only requires parties to disclose agreements that are binding on the listed entities:
 - 4.2.1. *A comprehensive reading of the provisions of Regulation 30A and the SEBI Memorandum crystallises the fact that the same was never meant to cover all types of agreements to be disclosed. Only those agreements that are binding on listed entities are required to be disclosed by the listed entity under Regulation 30A.*
 - 4.2.2. *For SEBI to reach a conclusion that KOEL must disclose the DFS under Regulation 30A, it would have to be first determined if the DFS is binding on KOEL. Without such a determination, KOEL cannot be unilaterally asked to disclose the DFS under Regulation 30A of the LODR. Admittedly, such a*

determination has been pending in a civil suit before the Pune Civil Courts since 2018.

4.3. Privity of Contract

4.3.1. *It is settled law that a contract cannot confer rights or impose liabilities on any person except the parties to the contract. The said position has been recently reaffirmed by the Hon'ble SC in **Cox & Kings Limited v. SAP India Private Limited & Anr.** – (2024)*

4.3.2. *The DFS has been entered into between the members of the Kirloskar family in their individual capacities and each representing their respective family branches. These individuals consciously left out KOEL and other Kirloskar companies neither did they make any commitments in the DFS on behalf of the companies, nor have they signed the DFS on behalf of any company under their management, control nor have any companies signed or ratified the DFS. The DFS has not been placed before or adopted by KOEL, nor have the provisions thereof been incorporated in the articles of KOEL.*

4.3.3. *The signatories to the DFS were careful enough to use the term 'Party' in Clause 15 to restrict the purported non-compete to the signatories to the DFS only in their individual capacities. No reference to any Kirloskar company is found in the said clause nor does the DFS or Clause 15 define the business of KOEL or any company.*

4.3.4. *Therefore, by no stretch of imagination can the clause bind publicly listed companies, which have a separate legal personality, and thousands of shareholders and are run and managed by an independent Board of Directors. Therefore, neither any rights can be conferred on KOEL, nor can any liabilities be imposed on KOEL since evidently KOEL has no privity to the DFS.*

4.4. SEBI cannot rewrite the contract executed between the parties

4.4.1. *The Hon'ble Supreme Court of India has, vide catena of judgements, established that a court, through its interpretative process cannot rewrite or create a new contract between the parties. In interpreting documents, it is the duty of the court to interpret the words in which the parties express the contract. A court cannot substitute its own views of the presumed understanding of the contractual terms by the parties, if the terms are explicitly mentioned.*

4.4.2. *It is not for SEBI to search for the subjective intention of parties when looking for contractual interpretation. Therefore, interpreting the DFS beyond what is stated in the said DFS is beyond the scope of SEBI's powers.*

4.5. Provisions of the Companies Act, 2013

4.5.1. *Section 179 of the Companies Act, 2013 states that the Board of Directors of a company shall be entitled to exercise all such powers and do all such things as the company is authorised to do subject to the Memorandum of Association and Articles of Association of a company.*

4.5.2. *A company cannot run on the whims and fancies of its shareholders or promoters, and as per law, the company functions under the directions of the Board of Directors of the company and its articles of association. The shareholders (even if all 100% wish to) cannot impose a private contract on a company.*

4.5.3. *Without prejudice to the foregoing, the doctrine of 'piercing of corporate veil' stands as an exception to the principle that a company is a legal entity separate and distinct from its shareholders, with its own legal rights and obligations. However, it is only in exceptional circumstances and in a restrictive manner, that the corporate veil can be pierced, and the present case is not one under which SEBI has asserted or can pierce the corporate veil of KOEL. KOEL places reliance on the following judgements in support of its arguments:*

- a) *Balwant Rai Saluja & Anr. v. Air India Limited & Ors. – (2014)*
- b) *Vodafone International Holdings BV v. Union of India & Anr. (2012)*

4.6. SEBI cannot approbate and reprobate and entrench upon the jurisdiction of the Civil Court

4.6.1. *SEBI vide its communication/decision dated February 17, 2021 has already concluded that KOEL is not a party to the DFS, and that the DFS is a private agreement entered into by the Kirloskar family members in their individual capacity. This communication is a pronouncement of fact by SEBI. Therefore, an amendment to the SEBI LODR Regulations will have no change on such pronouncement.*

4.6.2. *SEBI itself in its Affidavit dated June 29, 2021 has conclusively stated on oath that "...the DFS did not impact the management and/ or control of the Respondent No. 2, as contended by the Appellant."*

Consideration of issues and findings

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

- 5.1. Whether the undersigned is the competent authority to hear and decide on the present matter;
- 5.2. Whether DFS is subsisting as on the date of notification of Regulation 30A of LODR;
- 5.3. 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 (KOEL) as on date and therefore binding the listed entity;
- 5.4. Whether the same warrants disclosure under Regulation 30A of LODR; and
- 5.5. 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.

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

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

- 6.1. Before advertng 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 KOEL after affording opportunity of hearing.
- 6.2. In the interest of principles of natural justice, you (KOEL) 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.

6.3. 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

6.4. 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 SA 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)*
- 6.5. 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.
- 6.6. 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.
- 6.7. 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."

- 6.8. 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.

- 6.9. 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).
- 6.10. 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.
- 6.11. 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 (KOEL) as on date and therefore binding the listed entity

- 6.12. 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, 2015'² 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

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

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.

6.13. 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.

6.14. 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...."

6.15. 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.

6.16. In view of the same, the aforesaid clause imposes restrictions on KOEL 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 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.

6.17. 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.

- 6.18. 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

- 6.19. 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.
- 6.20. 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.
- 6.21. 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.
- 6.22. 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.

- 6.23. 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.
- 6.24. 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.
- 6.25. 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.
- 6.26. 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

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

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.

- 6.27. 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.
- 6.28. 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

- 6.29. It was earlier observed from the letter dated July 27, 2023 submitted by Mr. Atul Kirloskar and Mr Rahul Kirloskar to KOEL 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.
- 6.30. 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):
- 6.30.1. 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");
- 6.30.2. Atul Kirloskar's wife is Managing Director of KOEL;
- 6.30.3. 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.

7. 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.

8. 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
Digitally signed
by DIPANJAN
MITRA
Date: 2024.12.30
14:34:32 +05'30'

Dipanjan Mitra
General Manager