

Date: 31st December 2024

BSE Scrip Code: **505250**

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

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 matters pertaining to the DFS and the same being binding on 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 is in complete ignorance of *inter alia* facts, 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, in accordance with law. We have full faith in the judiciary to receive justice and relief that the Company deserves.

Thanking you,
For G. G. Dandekar Properties Limited
(formerly known as G. G. Dandekar Machine Works Limited)

Ashwini Paranjape
Company Secretary and Compliance Officer
Encl.: as above



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

SEBI/HO/CFD/CFD-SEC-4/P/OW/2024/0000039856/1

December 30, 2024

G G DANDEKAR PROPERTIES LIMITED

Represented by its Executive Director, Mr. Pranav Deshpande

B-211/1, MIDC Butibori Industrial Area, Kinhi Village,

Tah. Hingna, Dist. Nagpur – 441122

Maharashtra

Kind Attention: Mr. Pranav Deshpande, Executive Director

Dear Sir,

Sub: 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 G G Dandekar Properties Limited – Decision on the Representation filed by G G Dandekar Properties Limited in compliance with Order dated October 21, 2024 passed by the Hon'ble Securities Appellate Tribunal in Appeal no. 607/2024 & Misc. App. No. 1109/2024 & 1110/ 2024 (G G Dandekar Properties 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 by SEBI issued 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 ('GGD').
2. SAT, vide Order dated October 21, 2024 passed in the matter of G G Dandekar Properties Limited vs. Securities and Exchange Board of India, and other tagged matters, disposed of 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 G G Dandekar Properties Limited

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. *GGD submits that the Impugned Communication (i) is bad in law and ignores the settled principles of law, (ii) is in the teeth of the principles of natural justice, (iii) fails to consider the submissions made by GGD on facts as well as law and exceeds the scope of Regulation 30A of the SEBI LODR Regulations, (iv) reflects the biased and arbitrary conduct of SEBI against GGD, and (v) is likely to cause grave harm. loss and prejudice to GGD if not set aside. Hence, the Impugned Communication is non-est, void ab initio and is liable to be set aside.*
 - 3.2. *GGD is a public listed company and has been incorporated and existing under the laws of India since December 8, 1938, has a Board of Directors with reputed independent directors, and has thousands of public shareholders.*
 - 3.3. *A bare perusal of the DFS shows that it was entered into amongst certain members of the Kirloskar family in their individual capacities and each representing their respective family branches. A perusal of the DFS shows that letters of adherence were obtained from all individual members of the respective family branches of the parties (including on behalf of a minor child) at the time of execution of the DFS. It is also pertinent to note that the parties to the DFS consciously left out the companies and chose 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 GGD was a party to the said DFS nor has GGD signed, nor has GGD'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 GGD.*
 - 3.4. *After the introduction of the LODR Amendment 2023, GGD received a letter from Mr. Nihal Kulkarni, promoter of GGD on August 7, 2023, addressed to the Board of Directors of GGD. Under the said letter, the GGD Board was informed that the DFS was entered into amongst certain family members of the Kirloskar family in 2009 in their individual capacity and that 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 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 GGD and in his view, there is no action required by GGD under Regulation 30A of the SEBI LODR Regulations in respect of the aforesaid.*
 - 3.5. *The aforesaid letter was placed before the GGD Board and after consideration of the facts, documents on record and the provisions of Regulation 30A read with Clause SA of Para A of Part A of Schedule III of the SEBI LODR Regulations, the GGD Board determined, concluded and inter alia noted as follows:*
 - 3.5.1. *Under the newly introduced Regulation 30A of the SEBI LODR Regulations, all the shareholders, promoters, promoter group entities, related parties,*

directors, key managerial personnel and employees of a listed entity or 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 the SEBI LODR Regulations, are required to inform the listed entity about such agreement(s) to which such a listed entity is not a party and the listed entity shall in turn make disclosures in respect of such agreements to the stock exchanges and on its website within the timelines.

3.5.2. Clause 5 of Para A of Part A of Schedule III of SEBI LODR 2015 (which remains unamended by the LODR Amendment 2023) 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, even the newly introduced Clause 5A of Para A of Part A of Schedule III of SEBI LODR Regulations 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".

3.5.3. Therefore, based on the aforesaid provisions of laws, facts, circumstances and documents placed before the GGD Board, the GGD Board discussed in detail and reached a conclusion that GGD was not required to take the DFS on record and/or further disclose the same under Regulation 30A of the SEBI LODR Regulations.

3.6. Thereafter, on May 29, 2024, i.e., after almost 1 (one) year from the LODR Amendment 2023 coming into effect, Mr. Sanjay Kirloskar issued a letter to GGD and the GGD Board with a copy inter alia to SEBI and the stock exchanges calling upon GGD to disclose the DFS.

3.7. Thereafter, on June 4, 2024, GGD along with its Board was copied on an email from Mr. Sanjay Kirloskar addressed to SEBI ("SCK Complaint") regarding GGD's alleged non-disclosure of the DFS.

3.8. On June 27, 2024, SEBI sent an email to GGD enclosing the SCK Complaint, directed GGD to submit its comments on the matter, accompanied by any relevant documentary evidence.

3.9. Thereafter, the GGD Board once again discussed the matter and based on facts and documents on record and legal advice received in the matter, GGD issued its reply dated July 13, 2024, in response to SEBI's email dated June 27, 2024. Under the said reply, GGD submitted before SEBI that:

3.9.1. the matter pertaining to whether GGD is required to disclose the DFS under Regulation 30A of the SEBI LODR Regulations was dealt with by the GGD Board at length and after taking into consideration the express provisions of law, facts and circumstances and based on legal advice, the GGD Board

reached a conclusion that GGD is not required to disclose the same under Regulation 30A of the SEBI LODR Regulations, for the following reasons:(i) the DFS has no impact on the management or control of GGD; and (ii) the DFS does not impose any restriction or create any liability on GGD.

3.9.2. the DFS has been entered amongst the family members of the Kirloskar family in their individual capacity and has neither been signed by GGD nor has the GGD Board agreed to be bound by the same or ratified the same and/or incorporated the DFS into the Articles of Association of GGD, for it to be binding on GGD. Therefore, the DFS cannot unilaterally and arbitrarily be binding on GGD, especially since GGD is a public listed company having thousands of public shareholders.

3.9.3. the SCK Complaint has no merits and has been filed by Mr. Sanjay Kirloskar to misuse the machinery of the stock exchanges and SEBI, to somehow cause GGD to be bound by the DFS, for reasons best known to him and prayed that the said SCK Complaint be dismissed with costs.

3.9.4. Without prejudice to the foregoing, GGD submitted that in the event that SEBI intends to entertain or admit the SCK Complaint, GGD be given an opportunity to provide a detailed and point wise reply to the SCK Complaint and provide a hearing to GGD, before any order is passed in the matter.

3.10. Thereafter, on September 10, 2024, Mr. Sanjay Kirloskar once again, for his ulterior motives and with a sole and deliberate intention to harass GGD, issued yet another letter of even date to the GGD Board, forcing GGD to disclose the DFS.

3.11. GGD was in the process of deciding the next course of action and the reply to be provided to Mr. Sanjay Kirloskar based on legal advice, considering his repeated failed attempts to force GGD to disclose the DFS under Regulation 30A of the SEBI LODR Regulations and the harassment being caused to GGD.

3.12. However, in the interim, GGD shockingly received the Impugned Communication from SEBI requiring GGD 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 (which are mere allegations of Mr. Sanjay Kirloskar and are anyway sub judice of which SEBI is well-aware), and in flagrant disregard of the pertinent facts of the matter and in contravention of law and the established legal principles.

3.13. KBL has no locus to file a complaint against GGD

3.13.1. GGD reiterates that during the arguments held before the Hon'ble Tribunal in the GGD SAT Appeal on October 21, 2024, it came to light that the Impugned Communication has been issued pursuant to a complaint filed by KBL against GGD on or around September 9, 2024. However, it is pertinent to note that KBL is not a shareholder of GGD 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 GGD. KBL in no manner could have been aggrieved or affected by any alleged non-disclosure of the DFS by GGD

and therefore GGD is unable to understand how the Impugned Communication could have been issued based on a complaint filed by KBL. In fact, GGD 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.

3.13.2. Without prejudice to the foregoing, GGD reiterates 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 GGD and the rationale behind seeking the said disclosure from GGD 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.

3.13.3. In fact, in a recent order dated May 21, 2024, passed by the Ld. National Company Law Tribunal ("NCLT") in Company Petition No. 193 of 2017 - Kirloskar Industries Limited & Ors. v. Kirloskar Brothers Limited & Ors., the Ld. NCLT has inter alia held that there is oppression and mismanagement in the affairs of KBL and has further opined that the affairs of KBL are influenced and coloured by the aspirations of Mr. Sanjay Kirloskar and his family members in running the affairs of KBL (a public listed company) as per their whims and fancies. The Ld. NCLT further opined that the aforesaid has impacted the decisions of the Board of Directors of KBL, its compliance officer and KBL's participation in legal proceedings.

3.13.4. On this ground alone, the Impugned Communication is liable to be set aside.

3.14. The Impugned Communication is in the teeth of the principles of natural justice and issued without application of mind

3.14.1. Under the Impugned Communication, a period of only 7 (seven) days from the receipt thereof has been provided to GGD to comply with the directions of the Impugned Communication and make a disclosure of the DFS under Regulation 30A of the SEBI LODR Regulations.

3.14.2. The manner in which the ex-parte Impugned Communication has been issued, as elaborated above, shows that the same is in the teeth of principles of natural justice. SEBI has failed to provide an opportunity to GGD to be heard before issuing the Impugned Communication and coming to the conclusions mentioned thereunder. A perusal of the Impugned Communication shows that SEBI has issued the Impugned Communication in undue haste, without providing the parties an opportunity for a fair hearing, without considering the stand taken by GGD in the subject matter and in blatant disregard of the pertinent facts, supporting documents, and applicable law in support thereof.

- 3.14.3. *In fact, GGD in its reply dated July 13, 2024, had specifically requested SEBI to provide GGD, an opportunity of being heard before any order or outcome is passed in the subject matter. SEBI, in complete disregard of the said request, proceeded suo moto to issue the Impugned Communication, without providing GGD any opportunity to present its case or put forth its stance on the matter.*
- 3.14.4. *Further, GGD submits that while the Impugned Communication is titled as an "Advisory", GGD 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.*
- 3.14.5. *It is also pertinent to note that the violation of natural justice is admitted and further exacerbated by the fact that even though SEBI has admitted that the Impugned Communication has been issued by SEBI based on the complaint filed by KBL on or around September 9, 2024, SEBI did not provide a copy of the said complaint to GGD thereby depriving GGD any opportunity to challenge the said complaint, even before the issuance of the Impugned Communication.*
- 3.14.6. *Moreover, it was only after GGD was constrained to approach the Hon'ble Tribunal, that SEBI offered to hear GGD in respect of the Impugned Communication and pass an order in respect of the subject matter after hearing GGD, instead of first issuing a show-cause notice to GGD. 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 Impugned Communication and such a hearing would be a mere formality, which is contrary to the principles of natural justice and violative of rights of GGD.*
- 3.14.7. *GGD is given to understand that the 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 GGD). GGD 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 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 OFS being binding on Kirloskar companies, has been pending before the Pune Civil Court since 2018.*
- 3.14.8. *SEBI has in the past rightly refrained from getting involved in the dispute of interpretation of the DFS especially Clause 15 thereof, and has in fact observed that (i) KBL's complaints (at the behest of Mr. Sanjay Kirloskar) are not bona fide; (ii) KBL is not "aggrieved" by the decision of SEBI; (iii) KBL's complaints do not ventilate or agitate any genuine grievance in respect of*

securities law and the securities market in India with which SEBI is concerned; (iv) KBL's complaints seek to obtain orders in respect of private disputes between KBL and KOEL; and (v) the recourse available to KBL for any violation of the said DFS and/ or any other agreement/contract by KOEL is by approaching the relevant judicial fora, which KBL has in fact done by way of the Pune Suit which is presently pending before the Hon'ble Civil Judge, Senior Division, Pune and SEBI is not the appropriate authority for redressal of KBL's grievance regarding the purported violation of the said DFS.

3.14.9. *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 and despite knowing that the matter is sub judice, has unilaterally adjudicated that GGD is a party to the DFS, the DFS contains an alleged non-compete clause and the same imposes restrictions on GGD and would fall within the ambit of the explanation to Clause 5A of SEBI LODR Regulations. There is absolutely no basis or reasoning provided for the same by SEBI and SEBI has simply by way of an ex-parte order thrust the aforesaid determination on GGD and has directed GGD 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.*

3.14.10. *GGD is further given to understand that as stated above, in complaints filed by KBL against KOEL in respect of non-disclosure of the DFS under the SEBI LODR Regulations, SEBI by its decision/ 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.*

3.14.11. *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. An amendment to the SEBI LODR Regulations can by no stretch of imagination mean that SEBI suddenly becomes the forum and assumes powers to adjudicate a private contractual sub judice lis. SEBI cannot approbate and reprobate and the stand taken by SEBI in 2021 cannot change in October 2024 merely because there was an amendment to the law. Regulation 30A, 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 GGD (the listed company) nor has GGD (the listed company) agreed to be bound by the terms of the same. In any event, whether a company can at all be bound by a promise made by its promoters to their family members in a deed of family settlement where the company was not a party nor agreed to be bound by the same, is anyway a subject matter of a suit before the Pune trial court / arbitration proceedings. In view of the same, without prejudice to the fact that GGD is not bound by the DFS, it is submitted that the decision of SEBI to direct (under the garb of an advisory) GGD to make a disclosure of the DFS even though there is an active lis about the*

binding nature of the DFS on the companies, is unlawful. On this ground alone, the Impugned Communication is liable to be set aside.

3.14.12. *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 GGD.*

3.14.13. *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.*

3.15. *The Impugned Communication is contrary to settled principles of law*

3.15.1. *GGD submits that the Impugned Communication is tantamount to SEBI interpreting the DFS, a private family arrangement, and unilaterally extending its disputed terms to GOD, which is beyond the scope and powers of SEBI under the Securities and Exchange Board of India Act, 1992 ("SEBI Act") as well as the SEBI LODR Regulations. SEBI is a regulatory authority established for the protection of investors/ public shareholders and does not have the power to suo motu 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 Code, 1908 and the Indian Contract Act, 1972 and GGD is unable to fathom how SEBI has assumed the role of a civil court/arbitrator and suo moto come to the specific conclusion that GGD is a party to the DFS and that the DFS contains a non-compete clause to which GGD is bound without GGD being a party to the same, ratifying the same or otherwise agreeing to be bound by the same.*

3.15.2. *GGD submits that SEBI has failed to consider and appreciate that GGD is a public listed company and is neither a signatory to the DFS nor has GGD ratified the same or agreed to be bound by the same. GGD is a separate legal entity having thousands of public shareholders as well as an illustrious Board of Directors and merely because certain promoters who are family members have entered into an agreement amongst themselves in their individual capacities, the same does not automatically extend to GGD, particularly when GGD is neither a signatory to the DFS nor has GGD ratified the same or agreed to be bound by the same and has not incorporated the DFS in its articles of association. Any observation to the contrary will be in breach of GGD's legal rights and contrary to settled contract law and corporate laws principles including privity of contract and consensus ad idem. It is settled law that GGD has a separate legal personality from its promoters, directors and shareholders, and has the right to enter into a commercial transaction including agreements binding on it. Further, it is settled law that private family arrangements or agreements entered amongst family members in their individual capacity who may also be promoters of a listed company cannot be*

automatically binding on listed companies having large number of public shareholders and no such promoters can compel the listed company to be bound by it. Any view contrary will be against the principles of corporate law and contract law. Therefore, the unilateral and arbitrary view taken by SEBI that the DFS and any purported restrictions therein, will automatically extend to GGD even without it agreeing to be bound by the same, is completely contrary to the said legal principles and GGD's legal rights and is bad in law, without any authority, and hence is liable to be set aside.

- 3.15.3. *Without prejudice to the foregoing, GGD submits that in any event, a bare perusal of the DFS makes it clear that there is no impact on the management and control of GGD, the shareholding structure is intact and none of the clauses of the DFS are applicable to GGD as GGD does not use "Kirloskar" as its brand name or corporate name. Therefore, it is unclear as to the basis on which SEBI has come to the aforesaid conclusion and the same suffers from grave non-application of mind.*
- 3.15.4. *GGD submits that SEBI has failed to appreciate that the GGD Board has considered the matter pertaining to the DFS and concluded that:*
- 3.15.4.1. *There is no impact on the management and control of GGD and the shareholding structure of GGD is intact.*
- 3.15.4.2. *Without prejudice, GGD understands that in any event inter se transfer of shares under the DFS were completed in 2009 and the DFS does not continue to have any impact on the management or control of GGD at present, either directly or indirectly or potentially, for it to be considered as a "subsisting agreement" for the purposes of Regulation 30A read with Clause 5A of Para A of Part A of Schedule III of the SEBI LODR Regulations. The DFS was executed in 2009 and was acted upon at that time.*
- 3.15.4.3. *None of the clauses of the DFS are applicable to GGD as inter alia GGD does not use "Kirloskar" as its brand name or corporate name.*
- 3.15.4.4. *The DFS does not create/impose any restriction or liability on GGD.*
- 3.15.4.5. *GGD has not signed the DFS, it was never a party to such DFS nor was the DFS ratified by GGD after execution thereof or till date. In fact, a copy of the DFS has been placed before the Board for the first time as an annexure to the letter dated May 29, 2024, issued by Mr. Sanjay Kirloskar.*
- 3.15.5. *Therefore, the DFS is not binding on GGD and GGD is not required to disclose the DFS under Regulation 30A of the SEBI LODR Regulations.*
- 3.15.6. *Further, GGD understands that the legal validity and enforceability of the purported non-compete clause under the DFS is itself under question in the Pune Suit.*

- 3.15.7. *Therefore, the Impugned Communication goes beyond the scope of Regulation 30A of the SEBI LODR Regulations, ignores the settled principles of law and facts of the matter, and suffers from grave non-application of mind and is liable to be set aside.*
- 3.16. *The Impugned Communication is biased and agitates the personal disputes of Mr. Sanjay Kirloskar and KBL*
- 3.16.1. *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 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, has been pending before the Pune Civil Court since 2018.*
- 3.16.2. *Since Mr. Sanjay Kirloskar and KBL have been unable 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 before SEBI, by somehow forcing and arm-twisting GGD to disclose the DFS under the SEBI LODR Regulations so that the same becomes binding on GGD and other Kirloskar companies as Regulation 30A requires "disclosure of agreements binding listed entities". GGD reiterates that such a misleading disclosure by GGD when GGD is actually not bound by the DFS, is not only contrary to the rights and interests of GGD but also against the interests of all the public shareholders of GGD and will actually be in violation of the SEBI LODR Regulations and cause unwarranted market fluctuation and chaos. Therefore, the very intent of the SEBI LODR Regulations of investor protection will be defeated. However, in complete disregard of the aforesaid facts and circumstances despite having full knowledge of the same, SEBI has passed in the Impugned Communication.*
- 3.16.3. *SEBI has failed to appreciate whether the purported non-compete clause is enforceable and is applicable to GGD, is sub judice and SEBI has placed the horse before the cart and has prematurely called upon GGD to disclose the DFS. GGD is not aware of any court having interpreted Clause 15 of the DFS to be a non-compete clause enforceable against GGD.*
- 3.16.4. *GGD reiterates that the DFS is anyway already in public domain as the same is available on the website of KBL, of which Mr. Sanjay Kirloskar is the Chairman and MD.*
- 3.17. *This Representation is being issued without prejudice to any rights and contentions of GGD in the subject matter and GGD 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. GGD reserves its right to file further representations and rely on additional*

documents, as and when the need arises. GGD further craves leave to add, alter or amend any of the submissions / grounds raised in the present Representation.

3.18. *In light of the aforesaid submissions, facts and circumstances, legal provisions and judicial pronouncements, GGD humbly prays that:*

3.18.1. *The Impugned Communication be set aside;*

3.18.2. *A direction be passed by SEBI that GGD 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;*

3.18.3. *Declare that the complaints filed by Mr. Sanjay Kirloskar and KBL against GGD in this regard are dismissed;*

3.18.4. *Exemplary costs be imposed on Mr. Sanjay Kirloskar and KBL for filing frivolous complaints against GGD.*

3.18.5. *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 submissions made vide email dated December 02, 2024

4. Subsequent to the hearing, vide email dated December 02, 2024, you had *inter alia* submitted that you adopt the submissions made by Kirloskar Oil Engines Limited and Kirloskar Industries Limited as regards the following:

4.1. the 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. for disclosure of only those agreements under Regulation 30A that are binding on the listed entities;

4.3. SEBI's failure to appreciate that GGD and other Kirloskar companies are not a party to the DFS;

4.4. principles of privity of contract;

4.5. SEBI cannot re-write the contract entered between parties;

4.6. Section 179 of the Companies Act, 2013 that entrusts the Board of Directors of a company with the powers of management of the company;

- 4.7. SEBI cannot approbate and reprobate and entrench upon the jurisdiction of the civil court;
- 4.8. various judgments relied upon by Kirloskar Oil Engines Limited during the hearing held on July 27, 2024;
- 4.9. DFS is already in the public domain and therefore the sole intention of the complaint filed either by KBL or Mr. Sanjay Kirloskar is to make SEBI a tool to settle scores in a private family dispute.

Consideration of Issues and Findings

5. Based on your representation, oral submissions made during the hearing and additional submission 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 (GGD) 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 as under in light of the submissions made by the company (GGD) as under:

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

- 6.1. 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 GGD after affording opportunity of hearing.
- 6.2. In the interest of principles of natural justice, you (GGD) were afforded an opportunity of hearing on November 27, 2024 before the undersigned, who was duly authorised to consider and dispose of 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 of 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 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;!)*

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 is having any impact on the management and control of the listed entity or impose any restriction or create any liability upon the listed entity (GGD) 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, 2015'¹ 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.

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:

¹ https://www.sebi.gov.in/sebi_data/meetingfiles/apr-2023/1681703127125_1.pdf

"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 may impose restrictions on GGD 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 Regulations on the same.
- 6.25. It is noted that 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 petition² 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

² Registration Number- 798/2018; Filing Number- 4286/2018; CNR Number- MHPU020028922018



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.

- 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.
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 of, in compliance with the Order dated October 21, 2024 of the SAT.

Yours faithfully,

DIPANJAN MITRA
Digitally signed
by DIPANJAN
MITRA
Date: 2024.12.30
14:24:36 +05'30'

Dipanjan Mitra
General Manager