

BSE sends notice to Kirloskar companies for not disclosing settlement deed

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Synopsis

The bourse said in the letter that the material developments in the companies could have affected their share prices but the facts were concealed from shareholders. The BSE wants to know from the companies the reasons for not disclosing two material and price-sensitive information related to a DFS, show documents accessed by ET.



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The DFS had broadly separated and compartmentalised the ownership, management and control of Kirloskar entities into three groups, Vikram Kirloskar, Sanjay Kirloskar and jointly with Atul Kirloskar and Rahul Kirloskar.

Mumbai: The [BSE](#) has sent a notice to Kirloskar Brothers (KBL),

[NSE 6.31 %](#) (KIL), Kirloskar Oil Engines (KOEL) and other listed [companies](#) of the Kirloskar group for non-disclosure of the deed of family settlement (DFS) and also a [Sebi](#) show-cause notice on allegations of insider [trading](#), sources said.

The bourse said in the letter that the material developments in the companies could have affected their share prices but the facts were concealed from shareholders. The BSE wants to know from the companies the reasons for not disclosing two material and price-sensitive information related to a DFS, show documents accessed by ET.

The BSE letter also added that another non-disclosure is about a show-cause notice (SCN) issued by Sebi in December 2019 to the key promoters and board members of KIL who are also on the board of other companies. "The SCN is material information since it has levelled fraud charges and also those of insider trading. But no disclosure with regard to this has been made by KIL and other group companies so far," said the notice.

According to listing regulation, information such as shareholder agreement, joint venture agreement, family settlement agreement to the extent that it impacts management and control of the listed entity are required to be disclosed to the stock exchanges.

Sumit Agrawal, Founder, Regstreet Law Advisors & former SEBI Officer, said that the disclosure requirements under Listing Regulations is in two buckets. "One requires a materiality threshold while another is broad without application of materiality. Disclosure of family settlement agreements on the stock exchanges, there is no 'materiality' threshold but of 'impact assessment'. Therefore, a company cannot take fallback on its Materiality Policy to avoid disclosure and the only defence is if settlement between the parties does not impact management and control of the listed entity."

Documents reviewed by ET show that BSE wants to know from KIL as why it did not disclose two material and price sensitive information related to a DFS, which has been taken on record by another

company KBL recently.

Agrawal added, "While the concept of materiality is a state of relative importance, impact-oriented approach requires legal assessment of shareholders' need-to-know and effect on management and control from the angle of Companies Act and Takeover Code. Some law firms have sought to technically distinguish between a family 'arrangement' versus 'settlement' and also between 'agreements' to 'deeds' - although SEBI has usually pushed for disclosures."

All listed companies are required to mandatorily disclose family settlement agreements to the extent that it impacts management and control of the listed entity. Stock exchange sources say that since the DFS impacts the management and control of the concerned listed entities, disclosure of the DFS by each of the concerned listed entities is a mandatory requirement, without the Boards of each of those companies applying any materiality tests.

According to media reports, DFS had broadly separated and compartmentalized the ownership, management and control of different Kirloskar group entities and distributed the same into three groups, Vikram Kirloskar, Sanjay Kirloskar and jointly with Atul Kirloskar and Rahul Kirloskar.

According to sources, Atul Kirloskar and Rahul Kirloskar and Kirloskar Industries had, till 2014, signed proxy forms appointing Sanjay Kirloskar and the executives of KBL as their proxies to attend and vote for them at the annual general meetings of KBL. However, from 2015 onwards, no proxies were given.

In 2017, KIL along with Atul and Rahul Kirloskar filed a Company Petition against KBL and Sanjay Kirloskar and KBL's other Directors including Independent Directors before National Company Law Tribunal. Sanjay Kirloskar and KBL in 2018 had filed a Special Civil Suit at Pune against Atul Kirloskar, Rahul Kirloskar and some of other members of Kirloskar family and their entities for enforcement of the provisions contained in the DFS. Both the matters are sub-judice.

When contacted, the company secretary of KBL said: "KBL had promptly responded to the BSE letter. KBL by its letter dated April 19, 2016, had made disclosure of the DFS ... to both the BSE and NSE. Since the other matters referred in the email of the BSE didn't concern KBL, KBL hasn't dealt with it."

Email queries to KIL and KOEL did not elicit any response till Sunday press time.

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