WTM/SR/CFD/30/05/2017

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER IN THE MATTER OF KHODAY INDIA LIMITED – REPRESENTATIONS DATED JULY 26, 2016 AND NOVEMBER 16, 2016.

Background –

1.1 Khoday India Limited ("Khoday") is a company incorporated under the Companies Act, 1956. The Registered Office address of Khoday is at 'Brewery House', 7th Mile, Kanakapura Road, Bengaluru, Karnataka – 560062 (Source: MCA website). The equity shares of Khoday are listed on the Bombay Stock Exchange Limited ("BSE") [and also the Madras Stock Exchange Limited ("MSE") and the Bangalore Stock Exchange Limited ("BgSE")–since derecognized].

Ad–Interim Ex Parte Order dated June 4, 2013 –

1.2 Vide an Order dated June 4, 2013 ("Interim Order"), SEBI issued the following directions *inter alia* against Khoday, an entity which failed to comply with the requirement of minimum public shareholding requirement by June 3, 2013, –

> *17. "Hence, in exercise of the powers conferred upon me by virtue of Section 19 and under Sections 11(1), 11(2)(j), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") read with Section 12A of Securities Contracts (Regulation) Act, 1956 ("SCRA"), pending passing of the final order in these cases, I hereby:*
>
> *a. Direct freezing of voting rights and corporate benefits like dividend, rights, bonus shares, split, etc. with respect to the excess of proportionate promoter/promoter group shareholding in the above mentioned non – compliant companies, till such time these companies comply with minimum public shareholding requirement.*
>
> *i. For the purpose of above direction, proportionate promoter/promoter group shareholding shall be computed on the basis of the public shareholding in the company; e.g. if public shareholding in a company after the deadline is less than 25%, say 10%, in such case, the proportionate promoter shareholding would be 30% (i.e. three times the existing public shareholding). Thus the excess promoter/promoter group holding i.e. 60%, shall be frozen till the minimum public shareholding requirement is complied with.*

ii. *In case of more than one entity in the promoter/promoter group in a company, the excess promoter holding for the purpose of taking action shall be computed on a proportionate basis. For illustrating the example above, if there are three promoters; A, B and C with shareholdings of 45%, 35% and 10% respectively; the excess promoter holding of 60% shall be allocated as follows:*

1. *A: (60% multiplied by [45%/45%+35%+10%]) = 30.00%*
2. *B: (60% multiplied by [35%/45%+35%+10%]) = 23.33%*
3. *C: (60% multiplied by [10%/45%+35%+10%]) = 06.67%*

Total = 60.00%

b. *Prohibit the promoter/promoter group and directors of these non – compliant companies from buying, selling or otherwise dealing in securities of their respective companies, either directly or indirectly, in any manner whatsoever, except for the purpose of complying with minimum public shareholding requirement till such time these companies comply with the minimum public shareholding requirement.*
c. *Restrain the shareholders forming part of the promoter/promoter group in the non – complaint companies from holding any new position as a director in any listed company, till such time these companies comply with the minimum public shareholding requirement.*
d. *Restrain the directors of non – compliant companies from holding any new position as a director in any listed company, till such time these companies comply with the minimum public shareholding requirement.*

18. *This order is without prejudice to the right of SEBI to take any other action, including the following against the non – compliant companies, their promoters and/or directors or issuing such directions in accordance with law:*
    a. *Levying monetary penalty under adjudication proceedings;*
    b. *Initiating criminal proceedings by way of prosecution proceedings;*
    c. *Moving the scrip to trade – to – trade segment;*
    d. *Excluding the scrip from F&O segment;*
    e. *Any other action/direction as may be deemed appropriate."*

Confirmatory Order dated July 24, 2014 –

1.4.1 Khoday filed its reply to the Interim Order and thereafter, was granted an opportunity of hearing before the Competent Authority, SEBI, on June 25, 2014. The following directions were issued vide SEBI's Order dated July 24, 2014 ("**Confirmatory Order**"), –

> 9. *"The interim order was issued against the Company as it was non-compliant with the provisions of rule 19A of the Securities Contracts (Regulation) Rules, 1957 ("**SCRR**") and Clause 40A of the Listing Agreement read with section 21 of the SCRA, by not maintaining at least the minimum level (of 25%) of public shareholding as of June 03, 2013 (the time line before which such compliance was to be achieved). This contravention is still continuing as the shareholding of public shareholders in the Company, as per filing made for the quarter ended March 31, 2014, is only at 10.46%. The amended provisions of rules 19A of the SCRR came into force with effect from June 04, 2010, offering a time period of three years (i.e., on or before June 03, 2013) for a listed company to maintain public shareholding of at least 25%. Even after passing of the interim order, the Company has not taken any steps to comply with the MPS requirement.*
> 10. *…*
> 11. *Accordingly, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11(1), 11(2)(j), 11(4) and 11B thereof and Section 12A of the Securities Contracts (Regulation) Act, 1956, hereby confirm the directions issued vide the interim order dated June 4, 2013 against the company, **Khoday India Limited**, its directors, promoters and promoter group."*

Order of the Securities Appellate Tribunal dated July 7, 2016 –

1.5 Khoday filed an appeal before the Hon'ble Securities Appellate Tribunal ("**SAT**") challenging the Confirmatory Order dated July 24, 2014, whereby the directions contained in the Interim Order passed by SEBI on June 4, 2013, were confirmed.

1.6 Vide an Order dated July 7, 2016 (in Appeal No. 326 of 2014), the Hon'ble SAT disposed of the aforementioned appeal filed by Khoday, as under –

> 2. *"By the ex-parte ad-interim order dated 04.06.2013, SEBI had inter alia freezed the voting rights and corporate benefits like dividend, rights, bonus shares, split etc. with respect to the excess of proportionate promoter/promoter group shareholding by various companies set out*

therein (including the appellants herein) till such time the said entities comply with the minimum public shareholding requirement.

3. *It is submitted by the counsel for the appellants that in view of the subsequent order passed by the Karnataka High Court on 07.08.2014 in Company Petition No. 132 of 2014, the directions contained in the order of SEBI dated 04.06.2013 read with order dated 24.07.2014 have become incapable of performance. It is further submitted by the counsel for the appellants that the order passed by the Karnataka High Court being subsequent in point of time, appellants be permitted to withdraw the appeal with liberty to make a representation before SEBI within a period of three weeks from today and seek appropriate reliefs in the matter from SEBI.*
4. *Accordingly, the appellants are permitted to withdraw the appeal with liberty to make a representation before SEBI within a period of three weeks from today.*
5. *If the appellants make a representation within a period of three weeks from today, then SEBI shall consider the said application on merits and pass appropriate order thereon after giving an opportunity of hearing to the appellants. All contentions of both sides are kept open.*
6. *Appeal is disposed of in the above terms with no order as to costs."*

1.7 Thereafter, Khoday filed a representation dated July 26, 2016, before SEBI in accordance with the aforementioned Order of the Hon'ble SAT.

1.8 Accordingly, an opportunity of personal hearing was granted to Khoday on November 8, 2016, which was attended by the authorised representatives of the said company.

1.9 Vide its representation dated July 26, 2016 alongwith the contentions raised during the course of the hearing and through additional representation dated November 16, 2016, Khoday submitted as under –

2.3 "The Board of Directors of Khoday had decided to reduce the share capital of the Company to the extent of the public shareholding and consequently, delist from the aforementioned three stock exchanges (BSE, BgSE and MSE). Pursuant thereto, on 3rd May, 2013, Khoday submitted a draft scheme for reduction of share capital under Sections 101 to 104 of the Companies Act, 1956, to the BSE in compliance with the requirements contained in SEBI's Circular dated 4th February, 2013 and also submitted further documents in compliance with a subsequent SEBI Circular dated 21st May, 2013. Under the said Scheme, in lieu of the reduction of share capital, it was proposed to pay to the public shareholders a price of ₹75 per share (paid-up capital of ₹10/- and a premium of ₹65/-). The floor price of the share at the time as prescribed in SEBI (Delisting of Equity Shares) Regulations, 2009 ("Delisting

Regulations") *calculated on the basis of 26 weeks average high and low prices as quoted on BSE was ₹50.64. The intrinsic price valuation for the share carried out by an Independent Chartered Accountant and confirmed by SEBI Registered Category – I Merchant Banker is ₹30.49. Thus, the price proposed in the Scheme was much higher than both of the aforesaid amounts.*

2.4 *SEBI vide an Interim Order dated 4th June, 2013, passed against 105 companies including Khoday, held that 105 listed companies had not complied with the minimum public shareholding requirements of 25% by the prescribed date of 3rd June, 2013 and therefore, imposed restrictions on the Promoters'/Promoter Group shareholding in the said companies by freezing of voting rights and corporate benefits…*

2.5 *In view of the aforesaid proposed scheme, on receipt of SEBI's interim order, Khoday submitted a letter to SEBI dated 11th June 2013, setting out the salient features of the scheme and requested SEBI to refrain from initiating action against Khoday.*

2.6 *SEBI, by its letter dated 30th August, 2013, informed the BSE of its objections to Khoday's proposed scheme. It was SEBI's view … that 'the Scheme of Arrangement does not appear to be in the interest of investors.'… SEBI expressed a concern that 'the shareholders would be forced to exit without their consent; … the price to be paid to the public shareholders through reduction of capital may not be fair since there is no price discovery mechanism' and that 'this might put the public shareholders in a disadvantageous position.'*

2.7 *The BSE, by its letter dated 6th September, 2013, conveyed SEBI's objections to the proposed Scheme to Khoday and expressed inability to grant its No – objection to the proposed Scheme.*

2.8 *On 20th November, 2013, Khoday issued notice to all shareholders in its Annual Report for 2012–13 of the proposed scheme and facilitated voting on the Special Resolution in the matter of the proposed scheme of reduction of share capital to the extent of the public shareholding, both through postal ballot and manual voting. Pursuant thereto, at the Annual General Body meeting of Khoday held on 30th December, 2013, the Special Resolution was passed by not only more than the requisite majority of 3/4ths of all the votes cast but also inter alia by the majority vote of the public shareholders. Consequent to the aforesaid Resolution, on 7th June, 2014, Khoday filed company petition no. 132 of 2014 before the Hon'ble Karnataka High Court for sanctioning the aforesaid scheme.*

2.9 *On 24th July, 2014, SEBI passed a final Order against Khoday confirming the Interim Order dated 4th June, 2013, in respect thereof.*

2.10 *On 7th August, 2014, the Hon'ble Karnataka High Court allowed Khoday's company petition and sanctioned the scheme for reduction of share capital. In the said Order, the Hon'ble Karnataka High Court specifically observed that the reason why the scheme has been resolved is for the benefit of public shareholders. Subsequently, on 12th September, 2014,*

the Registrar of Companies in Karnataka, Bangalore issued a Certificate of Registration of the Court Order, altering the paid up share capital of Khoday, by reduction of capital.

2.11 …

*2.12 Pursuant to the Court Order dated 7th August, 2014, Khoday has given effect to the reduction of paid up share capital in its books of account, audited financial statements for the years 2014–15 and 2015–16 as also in quarterly statements of shareholding pattern filed with BSE in compliance with Listing Agreement & SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**Listing Regulations**").*

2.13 After the said Order, SEBI filed intervention proceedings in the Hon'ble Karnataka High Court, by way of four Company Applications being Company Application nos. 1415 of 2014, 1416 of 2014, 1467 of 2014 and 1468 of 2014 for being impleaded as a party in the proceedings before the Karnataka High Court and for recall and stay of the said Order dated 7th August, 2014. On 8th January, 2015, the Hon'ble Karnataka High Court passed an interim order keeping the Order dated 7th August, 2014, in abeyance. Khoday preferred an appeal against this Interim Order which was disposed of by the Hon'ble Division Bench of the Hon'ble Karnataka High Court on 12th March, 2015. The order dated 8th January, 2015 was set aside and the matter was remanded back to the Learned Single Judge to decide first whether SEBI could be impleaded as a party and to thereafter, consider SEBI's application for interim reliefs.

2.14 In the meantime, on 30th September, 2014, Khoday filed an appeal before SAT, challenging the Order of SEBI dated 24th July, 2014.

2.15 On 21st September, 2015, the Hon'ble Karnataka High Court dismissed all SEBI's Company Applications holding that SEBI did not have the right to be impleaded as a party in Khoday's Petition for sanctioning its Scheme. The Order, however, clarified that the proceedings initiated by SEBI against Khoday for non–compliance of the SCRR were independent and shall not be affected by the Order dated 7th August, 2014.

2.16 In view of the fact that the SEBI's Order dated 24th July, 2014, was passed prior to the High Court Order dated 7th August, 2014, SAT vide its Order dated 7th July, 2016, permitted Khoday to withdraw its Appeal no. 326/2014 with a liberty to make a representation to SEBI.

…

3.1 As of today, pursuant to the Order dated 7th August, 2014, Khoday's paid – up, share capital stands reduced to the extent of entire public shareholding. The aggregate amount of ₹29.50 Crores due to public shareholders has been deposited by Khoday in a separate bank account with Punjab National Bank, L. C. Branch, M. G. Road, Bangalore. …

3.2 Khoday has followed due procedure as prescribed by the Companies Act, 1956, for reduction of share capital including passing of a special resolution for approval of this reduction of share capital. Further, this special resolution has been approved by majority of the public shareholders as well, in compliance with the requirement under the SEBI Circulars. Hence,

Khoday has not committed any illegality while reducing its share capital to the extent of the public shareholding. It is of utmost importance and relevance that this scheme has ultimately been sanctioned by the Hon'ble Karnataka High Court after publication of notice of the scheme and after inviting objections from the general public. Considering all facts and circumstances, the Hon'ble Court has approved and sanctioned Khoday's scheme on 7th August 2014 with the observation that it is in the interest of the public shareholders.

3.3 SEBI's main concern and objection to Khoday's proposal, as set out in SEBI's letter dated 30th August 2015, addressed to the BSE, was that the reduction of share capital may not be in the interest of the public shareholders and that they may be prejudiced and be forced to exit without their consent or at a price not agreeable to them. The public shareholders have however, voted in favour of the scheme, which was ultimately sanctioned by the Karnataka High Court, being satisfied by the price that they will receive for the said shares. It is most respectfully submitted that the pendency of the present proceedings is in fact preventing the public shareholders from getting the amounts due to them in this regard.

3.4 While there is a procedure in SEBI's Delisting Regulations on the method to be followed by a company for delisting, there is no bar on any Company applying for a scheme to reduce its share capital for giving an exit opportunity to its public shareholders. This method is also a valid and legal manner for reduction of shareholding. Such a scheme is placed before the shareholders for their approval and it is only after the shareholders approve the same that the Court grants its sanction. In light of the fact that as on the date of the Court Order sanctioning the scheme operates as Order–in–rem, the public shareholding in Khoday has ceased to exist and delisting is merely the consequential and logical step. Since in passing the Special Resolution, the public shareholders have accepted the scheme, it cannot be stated that any prejudice has been caused to them. In fact, several shareholders have also addressed letters to Khoday inquiring about payment of the monies arising out of reduction of share capital.

3.5 It is respectfully submitted that the restraints imposed on the company, its promoters and directors are all mostly "till such time these companies comply with the minimum public shareholding requirement." Since the aforesaid scheme has now been approved and Khoday as such can have no public shareholding and in fact is desirous of delisting from the BSE where it is listed at present, it is unreasonable and unfair to continue to impose the restrictions as set out in the Order dated 24th July, 2014 read with the Interim Order dated 4th June, 2013 and to force Khoday to meet the minimum public shareholding requirement.

3.6 The method adopted by Khoday for reducing its public shareholding is a statutory right under law. It is an alternative method under which the public shareholders of a company would be entitled to obtain value for their shareholding in a company which is desirous of delisting.

Hence, it is only fair that the restrictions so far imposed on Khoday in the said Order dated 24th July, 2014, be vacated and Khoday be permitted to delist.

3.7 *The intrinsic value of Khoday shares as computed by an Independent Chartered Accountant and subsequently confirmed by a SEBI registered Merchant Banker as well as the floor price prescribed by SEBI under the Delisting Regulations are both substantially lower than the price offered by Khoday to its erstwhile public shareholders on reduction of share capital. The public shareholders have also been made aware of SEBI's objections including the fact that the price that is being proposed may be lower than that which could be arrived at based on the book building process. Despite this, majority of the public shareholders have approved the resolution for reduction of share capital. In view thereof, the procedure adopted by Khoday is not only legally permissible, fair and transparent but also has met approval of the public shareholders and subsequently, been approved by the Hon'ble Karnataka High Court. It is also relevant that even if a price is determined using the book building process under the Delisting Regulations, a company, if it finds the price too high, is not obliged to go ahead with delisting and the public shareholders may not get that value for their shares. The public shareholders being conscious of these facts have approved the scheme for reduction of share capital.*

3.8 *It is also a matter of record that Khoday's shares have not at all been traded on the BgSE and MSE in the past 5 years and very negligible trading on the BSE. Further, Khoday has not declared any dividends in the absence of distributable profits. Therefore, the scheme for reduction of share capital to the extent of public shareholding would be beneficial to the shareholders as it would make investible funds available to them. Given these circumstances, the shareholders have consciously approved of the scheme for reduction of share capital.*

3.9 *Khoday, as any other listed company, is entitled to apply for delisting of its shareholding. Likewise, Khoday is entitled to apply for reduction of its share capital. In the present case, since Khoday's public shareholding stands extinguished and an anomalous situation has arisen as today Khoday has no public shareholders who would participate in the procedure laid down in the Delisting Regulations. In view thereof, Khoday humbly requests SEBI to consider these facts and circumstances and permit it to delist from BSE (BgSE and MSE having since been suspended) and to vacate the Orders dated 24th July, 2014 and 4th June, 2013. Since the procedure adopted by Khoday is within the statutory framework and has been approved by the shareholders (including majority of public shareholders) by a special resolution and thereafter, sanctioned by the Hon'ble Karnataka High Court, it is only reasonable, fair and in the interest of justice that the said Order, which is to operate until Khoday meets with the minimum public shareholding requirements, stands vacated. The above facts clearly show that no prejudice has been caused to the public shareholders of Khoday and on the contrary, they will stand to benefit as they will receive a substantial premium on the value of their shareholding in Khoday.*

3.10 Khoday humbly submits and requests SEBI to consider the entire facts and circumstances and

i. Rescind/vacate the Orders dated 24th July, 2014 and 4th June 2013,

ii. Direct BSE to accept the fresh Record Date that may be fixed by Khoday and thus, enable outstanding payment to its erstwhile public shareholders.

iii. Permit the delisting of Khoday's shares from BSE arising as a consequence of reduction of paid-up share capital of the Company, as approved by the Hon'ble High Court of Karnataka, vide its Order dated 7th August, 2014."

Findings –

1.25.1 I have considered the oral and written submissions made by Khoday during the hearing held on November 8, 2016 and vide the representations dated July 26, 2016 and November 16, 2016, alongwith all relevant material available on record. In this regard, I note as under –

Proceedings before the Hon'ble Karnataka High Court –

1.25.2 In its submissions, Khoday has stated:

"After the said Order (i.e. 7th August, 2014), SEBI filed intervention proceedings in the Hon'ble Karnataka High Court, by way of four Company Applications being Company Application nos. 1415 of 2014, 1416 of 2014, 1467 of 2014 and 1468 of 2014 for being impleaded as a party in the proceedings before the Karnataka High Court and for recall and stay of the said Order dated 7th August, 2014. On 8th January, 2015, the Hon'ble Karnataka High Court passed an interim order keeping the Order dated 7th August, 2014, in abeyance. Khoday preferred an appeal against this Interim Order which was disposed of by the Hon'ble Division Bench of the Hon'ble Karnataka High Court on 12th March, 2015. The order dated 8th January, 2015 was set aside and the matter was remanded back to the Learned Single Judge to decide first whether SEBI could be impleaded as a party and to thereafter, consider SEBI's application for interim reliefs. …

On 21st September, 2015, the Hon'ble Karnataka High Court dismissed all SEBI's Company Applications holding that SEBI did not have the right to be impleaded as a party in Khoday's Petition for sanctioning its Scheme. The Order, however, clarified that the proceedings initiated by SEBI against Khoday for non–compliance of the SCRR were independent and shall not be affected by the Order dated 7th August, 2014."

1.25.3 From the material available on record, it is observed that pursuant to the Order of the Division Bench of the Hon'ble Karnataka High Court dated March 12, 2015, the Learned Single Judge of that

High Court vide an Order dated September 21, 2015, ruled on the company applications filed by SEBI as under:

14. *"In the instant case, SEBI is alleging non–compliance of SCRR for which proceedings in exercise of the power under Section 19 and Section 11(1), 2(j), (4) and 11B of the SEBI Act read with Section 12 A of SCRA has already been initiated. If in that light the said conclusion in MCX Stock Exchange case is kept in view, there can be no doubt that the proceedings are independent of each other. If that be the position, irrespective of the sanction being granted by the Company Judge to the reduction of share capital, the non–compliance of any other regulations over which the SEBI has jurisdiction would be dealt with by the SEBI as a regulatory authority and the consequence thereof will visit the listed Company. Since the two proceedings are held to be different and distinct, the Order dated 07.08.2014 in Co. P. No. 132/2014 will only have the effect of providing the approval as contemplated under Sections 100 to 104 of the Companies Act to the extent the procedure contemplated therein has been adhered to, but it cannot be held as a shield by the Company to protect itself in the proceedings already initiated or to justify the non-compliance with the requirement of any other regulations, if it is still required to be compiled.*
15. *Therefore, in the instant facts, when in a circumstance the proceedings under the SEBI Act read with SCRA for not achieving the minimum public shareholding requirement, action is initiated and an Order dated 04.06.2013 is made and a Confirmatory Order dated 25.07.2014 is passed, the reduction permitted if given effect also, the non–achievement of the public shareholding will continue and consequences if any, will follow. …*
16. *In the result, the following –*
    i. *The C. A. Nos. 1415/2014, 1416/2014 and 313/2015 are accordingly rejected.*
    ii. *The C. A. Nos. 1648/2014 and 1778/2014 are disposed of as unnecessary.*
    iii. *It is clarified that the order dated 07.08.2014 in COP no. 132/2014 shall remain independent and shall not affect the proceedings under SEBI Act and SCR Act initiated by SEBI for non- compliance of SCRR, which would be considered for its own merits and all the contentions are left open in appeal pending before the Securities Appellate Tribunal."*

1.25.4 Thereafter, SEBI filed an appeal in the Hon'ble Karnataka High Court (O. S. Appeal no. 28/2015 in Co. P.: 132/2014) challenging the abovementioned Order dated September 21, 2015, which is pending determination by that Court.

2.1.1 The Interim Order read with the Confirmatory Order, issued by SEBI against Khoday, was for non–compliance with the provisions of Rule 19A of the SCRR and Clause 40A of the Listing Agreement read with Section 21 of the SCRA i.e. for not maintaining the minimum level of public shareholding

(*at least 25%*) as of June 3, 2013 (*the date before which such compliance was to be achieved*). Accordingly, proceedings imitated by SEBI against Khoday, are concerned with ensuring compliance with the requirements of minimum public shareholding and not in respect of its equity restructuring (through the Scheme of Arrangement involving reduction of capital). As noted from paragraph 1.25.3, the Hon'ble Karnataka High Court has clarified that the two proceedings under the Companies Act and the SCRA are separate and the Scheme of Arrangement has no bearing on the proceedings initiated by SEBI.

3.1.1 To achieve delisting (as sought by Khoday), a listed company is required to comply with the provisions of the Delisting Regulations. In this regard, Khoday vide letter dated February 13, 2013, requested SEBI for an exemption from the applicability of the Delisting Regulations in respect of the Scheme of Arrangement involving reduction of capital. Vide letter dated April 1, 2013, SEBI rejected the request made by Khoday *inter alia* informing the Company that there was no provision under the Delisting Regulations which enabled SEBI to grant exemption from the applicability of the Delisting Regulations. However, SEBI advised Khoday to comply with the minimum public shareholding requirement within the stipulated timeline i.e. June 3, 2013.

3.1.2 Vide letter dated August 30, 2013 (addressed to BSE), SEBI offered its comments on the Scheme of Arrangement filed by Khoday (involving reduction of capital) with BSE, stating –

i. "… Quasi-judicial proceedings are pending against Khoday since an Interim Order has been passed by SEBI … for non-compliance with the requirement of minimum public shareholding.

ii. The Scheme provides for reduction of capital to the extent of public shareholding only and the company has clearly mentioned its intention of consequential delisting from the Stock Exchanges after the Scheme of reduction of capital gets implemented.

iii. Therefore, the Scheme of Arrangement does not appear to be in the interest of investors on account of the following reasons:

a. Any company desirous of delisting its equity shares has to obtain prior approval of its shareholders by a special resolution passed through postal ballot after disclosure of all material facts. However, similar approval is not necessary in case of reduction of capital. Therefore, the shareholders would be forced to exit without their consent.

b. As per regulation 14(1) of the Delisting Regulations, all the public shareholders are entitled to participate in the book building process … which leads to fair price discovery. However, the price to be paid to the public shareholders under the reduction of capital scheme may not be fair since there is no provision of price discovery mechanism. This might put the public shareholders in a disadvantageous position as they might not be able to get the best price for exiting from the Company.

c. *The Company is trying to circumvent the Delisting Regulations through the proposed Scheme.*

iv. *In view of the above, SEBI is of the view that No–Objection Certificate should not be granted to the company and accordingly, the company may be intimated to include the observation of the Stock Exchanges in its filings made to the High Court."*

3.1.3 Vide letter dated July 19, 2013, BSE objected to the Scheme of Arrangement *inter alia* stating that Khoday was not in compliance with minimum public shareholding requirement and that the company preferred to delist its equity shares from the stock exchange by way of such Scheme instead of following the requirements specified in the Delisting Regulations and therefore, the proposed Scheme was in contravention of the Delisting Regulations.

3.1.4 Vide letter dated July 23, 2013, MSE also raised its objection to the Scheme of Arrangement *inter alia* stating that Khoday did not want to give any options to its shareholders to continue as members of the company. Further, MSE suggested that since the ultimate objective of the Scheme was to delist, Khoday should adopt the provisions of the Delisting Regulations.

3.1.5 Vide letter dated September 6, 2013, BSE refused to grant its No–Objection to the Scheme of Arrangement proposed by Khoday.

3.1.6 It would appear that the issues regarding objections to the Scheme of Arrangement, raised by SEBI and BSE, were not specifically brought to the notice of the Hon'ble Karnataka High Court, for its consideration since the Order dated August 7, 2014, was silent on the same. As stated earlier, the proceedings relating to the Scheme of Arrangement under the Companies Act and proceedings initiated by SEBI under the SEBI Act, SCRA, etc. are independent of each other. Further, the Hon'ble High Court rightly observed: *"… irrespective of the sanction being granted by the Company Judge to the reduction of share capital, the non–compliance of any other regulations over which the SEBI has jurisdiction would be dealt with by the SEBI as a regulatory authority and the consequence thereof will visit the listed Company."*

3.1.7 In addition to the above, I note the following –

a. Under the Scheme of Arrangement involving reduction of capital, Khoday *proposed to pay to the public shareholders a price of ₹75 per share (paid-up capital of ₹10/- and a premium of ₹65/-).* The price recommended through a Chartered Accountant's Report is not recognized as a method for determining the Offer Price under the Delisting Regulations. As per the Delisting Regulations, any company desirous of delisting its shares from any recognized stock exchange

where such shares are listed, shall follow the procedure laid down under the said Regulations. Accordingly, Khoday was mandated to follow the procedure laid down in the Delisting Regulations for delisting of its shares.

b. The floor price indicated in the Delisting Regulations is the minimum price that is required to be offered to the public shareholders, by the Promoters who intend to delist the company. In cases of delisting through the book building process specified under the Delisting Regulations, the discovered/exit price in several instances was much more than the floor price. For example, in the matters of Rhodia Specialty Chemicals India Limited, Floor Price was ₹442.64 whereas discovered/exit price was ₹1200 and Jolly Board Limited, Floor Price was ₹350 whereas discovered/exit price was ₹1000.

c. Public shareholders have the right to determine the final price in matters concerning delisting of shares of a listed company since, non–determination by them through price discovery mechanism under the Delisting Regulations, may result in a permanent loss of opportunity for them. Therefore, by not following the procedure followed under the Delisting Regulations, Khoday deprived the public shareholders from participating in the price discovery mechanism.

3.1.8 The amended provisions of Rule 19A of the SCRR came into force w.e.f. June 4, 2010, offering a time period of three years (i.e. on or before June 3, 2013) for a listed company to maintain at least the minimum public shareholding of 25%. However, in order to avoid compliance with the directions contained in the Interim Order read with the Confirmatory Order, Khoday opted for the Scheme of Arrangement involving reduction of share capital and as a result failed to ensure compliance with the requirement of minimum public shareholding. Thus, Khoday is in violation of the provisions of the securities laws i.e. SEBI Act, SCRA, etc.

3.1.9 The appeal filed by SEBI against the Order of the Hon'ble Karnataka High Court dated September 21, 2015, is *inter alia* on the grounds that the Scheme of Arrangement involving reduction of capital violated the provisions of the SEBI Act and the SCRA and that Khoday skirted the Delisting Regulations and also the minimum public shareholding requirement, which is detrimental to the interest of investors and which may have wider consequences for other listed companies that may be tempted to take the route of capital reduction.

3.1.10 Upon a consideration of the preceding paragraphs, I find no reason to vacate or rescind the Interim Order dated June 4, 2013 read with the Confirmatory Order dated July 24, 2014, as sought for by Khoday vide its representations dated July 26, 2016 and November 16, 2016.

Order –

4.1 In view of the foregoing and in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, the representations dated July 26, 2016 and November 16, 2016, made by **Khoday India Limited,** are disposed of accordingly without any further directions.

Place: Mumbai
Date: May 8, 2017

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA