

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/DSR/RG/ 21/2013]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against

Shri Mahendra Pandey

[PAN: AAACPP5315K]

In the matter of

Alka Securities Ltd.

Background:

1. The Hon'ble Securities Appellate Tribunal (SAT), in Appeal No. 37 of 2013, vide order dated June 26, 2013, while setting aside the adjudication order dated December 17, 2012 remanded the case to the Adjudicating Officer for reconsideration. The hon'ble SAT observed that vital documents like e-mail (received from National Stock Exchange (NSE) on January 20, 2012)and other connected documents were not supplied to Shri Mahendra Pandey (hereinafter referred to as the 'Noticee') while holding him guilty of the violation of Insider Trading Regulations in the matter of Alka Securities Ltd. (hereinafter referred to as 'ASL').

Notice, Reply & Personal Hearing:

2. I have been appointed as the Adjudicating Officer, in place of previous Adjudicating Officer, vide order dated August 29, 2013 under Section 15-I of

the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as the Act) the alleged violation of Regulation 13(4) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations') by the Noticee.

3. Accordingly, a letter dated September 25, 2013 was issued to the Noticee enclosing a list of the following documents.
 - a. Appointment order dated April 16, 2012 appointing the Adjudicating Officer.
 - b. Statement of your demat accounts bearing Nos. 1302080000228879 and 1204910000088217.
 - c. Shareholding pattern of Alka Securities Limited (ASL) for the relevant weeks as submitted by Purva Sharegistry (India) Pvt. Ltd.
 - d. Copies of various disclosures made to BSE showing you as the compliance officer.
 - e. Letter dated November 22, 2006 by ASL addressed to FIU-IND.
 - f. The application form for trading members at NSE describing you as the Chief Executive/Managing Partner/Proprietor of ASL.
 - g. E-mail dated January 20, 2012 from NSE along with the attachments.
4. The letter was duly delivered to the Noticee. However, the Noticee did not reply to the said letter. Therefore, in the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on November 21, 2013. In the meantime, the Noticee, vide letter dated October 31, 2013 (received by the office of the Adjudicating Officer on November 18, 2013) replied to the said letter. The Noticee appeared on the scheduled date of hearing and reiterated the submissions made by him in his reply. The Noticee acknowledged the receipt of all the documents enclosed along with the letter dated September 25, 2013 during the said hearing.

Consideration of Issues, Evidence and Findings:

5. I have carefully perused the charges leveled against the Noticee as per the SCN dated May 30, 2012, written and oral submissions of the Noticee and the materials & documents as available on record. The issues that arise for consideration in the present case are:

- a) Whether the Noticee has violated the provisions of Regulations 13(4) read with 13(5) of the PIT Regulations?***
- b) Does the violation, if any, on the part of the Noticee attract any penalty under Sections 15A (b) of the SEBI Act?***
- c) If yes, what should be the quantum of penalty?***

6. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations which read as under:-

Relevant provisions of PIT Regulations:-

13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies -

Continual disclosure

(3)

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within two working days of:

- (a) the receipts of intimation of allotment of shares, or***
- (b) the acquisition or sale of shares or voting rights, as the case may be.***

7. I note that the requirement of Regulation 13(4) read with 13(5) of the PIT Regulations are two fold, i.e., disclosure to the company and to the Stock Exchange by any person who is a director or officer of a listed company, the total number of shares or voting rights held and change in shareholding or

voting rights, if there has been a change in such holdings which exceeds ₹ 5 lakhs in value or 25000 shares or 1% of total shareholding or voting rights, whichever is lower; and such disclosure has to be made within two working days of receipt of intimation of allotment of shares or the acquisition or sale of shares or voting rights.

8. I find that during the investigation period, the Noticee had bought a total of 523690 shares and sold a total of 804490 shares of ASL resulting in change in the Noticee's shareholding. I note that on September 22, 2008, the Noticee bought 523690 shares and sold 300000, 41000 and 182690 shares on October 10, 13 and 21, 2008, respectively, which was over 25000 shares on all the three occasions. Further, the Noticee acquired 140700 , 106850 and 33250 shares on March 21, 2009 , April 13 & 21, 2009, respectively. In view of the said transactions, there was a change in the shareholding of the Noticee for more than 25000 shares of ASL on three (sold) and four (acquired) occasions, respectively. Since he failed to make required disclosures, the Noticee was alleged to have violated Regulation 13(4) read with Regulation 13(5) of the PIT Regulations.
9. The Noticee in his reply dated October 31, 2013 has referred to his earlier letter dated November 12, 2012 which was filed by him as reply to the show cause notice dated May 25, 2012 and has requested to take the said reply into consideration. The Noticee in his earlier reply dated November 12, 2012 submitted that he had ceased to be a director of ASL with effect from September 25, 2001. The Noticee had also submitted the Form 32 which was submitted to the Registrar of Companies along with the acknowledgement. Therefore, the Noticee stated that he was not a director of the company during the investigation period. Further, the Noticee had submitted that he is not an "officer" of the company as contemplated under Regulation 2(g) of the PIT Regulations. He stated that he was neither the auditor of the company nor a director, manager or secretary. During the investigation period, he was not even holding any shares of the company and was in no position to issue directions to the Board of Directors of the Company. He further submitted that even though he was designated as the 'compliance officer' of ASL, the

Hon'ble SAT has already held in its order dated December 22, 2011 that "officer" as defined in Section 2(30) of the Companies Act, 1956 and Regulation 2(g) of PIT Regulations envisages a person who could direct or influence the affairs of the company as distinguished from a mere compliance officer. The additional allegation of he being the "principal officer" would also be covered by the same observations of the Hon'ble SAT. Also, the Noticee submitted that the allegation of he being the Chief Executive/Managing Partner/Proprietor of ASL would also not stand as he had resigned as a director with effect from September 22, 2001.

10. Further, the Noticee in his reply dated October 31, 2013 submitted that the e-mail dated January 20, 2012 was a reply given by NSE to the query made by SEBI whether the Noticee was the Principal Officer of ASL during the period from January 01, 2008 to July 31, 2009 under the Prevention of Money Laundering Act, 2002 (PMLA). The reply of NSE to the same is in negative as according to NSE they did not maintain or collect details of Principal Officer under PMLA. However, NSE has stated that the Noticee is the CEO of ASL as per its membership database. The Noticee states that the said e-mail is dated January 20, 2012 and has admitted that he was the CEO of ASL as on that date but denied being either a CEO or an officer of ASL within the meaning of the term as contained in Section 2(30) of the Companies Act, 1956 read with the definition of the expression "officer" under Regulation 2(g) of the PIT Regulations during the period from January 01, 2008 to July 31, 2009.
11. The Noticee further submitted that he was appointed as the CEO only in December 2009 and the said information was furnished by ASL to NSE online .ASL has surrendered its trading membership with effect from December 24, 2012 and the surrender of its membership was accepted on February 22, 2013 effective from December 24, 2012. The Noticee states that as the membership has been surrendered, ASL has no access to the NSE portal and cannot retrieve the information supplied online with regard to the Noticee's appointment as the CEO. In support of the said submission, the Noticee in his reply has stated that he has submitted the copy of the extracts of the annual reports of ASL for the period 2006-2007, 2007-2008 and 2008-2009 showing

the corporate information including the Chairperson and Managing Director of ASL. The Noticee submits that on the basis of an application of March 2000, it is alleged that he was the CEO and he resigned as the director of ASL on September 22, 2001 by which he also ceased to be the CEO of ASL.

12. I find from the show cause notice that the Noticee was a promoter and acted in various capacities such as principal officer, Chief Executive/Managing Partner/Proprietor of ASL which have not been denied by the Noticee. The Noticee was appointed by ASL as a "Principal Officer" on November 21, 2006 under prevention of Money Laundering Act, 2002 to take care of compliance matters of the company and the same was communicated to the Director, FIU-IND vide the company's letter dated November 22, 2006. The Board Resolution appointing the Noticee as the "Principal Officer" is also available on record.
13. Further, vide e-mail dated January 20, 2012, NSE has provided the document which states that the Noticee was the Chief Executive/Managing Partner/Proprietor of ASL as on March 2000 which has also been admitted by the Noticee. Further, the said e-mail also states that the Noticee is the Chief Executive Officer (CEO) of ASL as per their Membership Database. I find from the submissions made by the Noticee that he was the Director of ASL in the year 2000 and ceased to be the same on September 22, 2001 upon his resignation from the said position. Further, I find merit in the submissions of the Noticee that he was appointed as the CEO only in December 2009 and that he was not the CEO for the period from January 01, 2008 to July 31, 2009. As the trading membership of ASL has been surrendered, ASL does not have access to the NSE portal and therefore, the Noticee has stated that the said information supplied online with regard to the Noticee's appointment as the CEO cannot be retrieved. Further, I find from the reply of the Noticee that he has provided extracts of annual reports of ASL for the period 2005-06, 2006-07 and 2008-09 showing the corporate information including the Chairperson and Managing Director of ASL. On perusal of the said reports, I find that one Shri Ravi Pandey was the CEO of ASL till 2006 and thereafter, Shri Raj Kumar Sharma and Shri Brijesh Kothari have been the CEOs of ASL.

for the relevant period i.e. from January 01, 2008 to July 31, 2009. I find merit in the said submissions and therefore, it is clear that the Noticee was not the CEO of ASL during the period under consideration in the present case.

14. I also find from NSE's e-mail that the Noticee was the Principal Officer of ASL during the period from January 01, 2008 to July 31, 2009 under the Prevention of Money Laundering Act, 2002 (PMLA). I note that the role of the Noticee in the capacity of a Principal Officer under the PMLA is a specific one and is only restricted to the said purpose and therefore, the same cannot be taken into consideration in the present case.
15. Further, I find that BSE vide its e-mail dated January 27, 2012 has submitted the copies of the Quarterly Compliance Reports for the Quarter ended December 31, 2007, March 31, 2008, June 30, 2008 and March 31, 2009 which have been duly signed by the Noticee as a compliance officer of ASL. I find from the compliance reports that the Noticee has signed the reports on corporate governance filed by the company under Clause 49 of the Listing Agreement and also for the disclosures filed under Regulation 3(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. The Noticee has admitted the same. However, I find that the definition of the term "officer" as defined under Section 2 (30) of the Companies Act, 1956 clearly mentions the persons who can be said to be the officers of the company which includes any director, manager or secretary or any person who can direct or influence the affairs of the company. I find that the Noticee was only the compliance officer of ASL during the relevant period and was in charge of all the affairs with regard to corporate compliances of the company. Therefore, it is difficult to conclude that the Noticee was in a position to influence or direct the affairs of the company while acting as a compliance officer.
16. The Hon'ble Securities Appellate Tribunal (SAT) in *Appeal No. 178 of 2011- Shri Mahendra Pandey Vs Securities and Exchange Board of India (SEBI)*, while remanding the matter to SEBI, has, inter alia, observed as under:

".....It is necessary to have a look at Section 2(30) of the Companies Act, 1956 to understand the meaning of the term 'officer' as contained in Regulation 2(g) of the Insider Trading Regulations. Section 2(30) of the Companies Act, 1956 defines an 'officer' as under: "officer" includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act;"

A reading of the above provision makes it clear that an 'officer' envisaged in Section 2(30) of the Companies Act, 1956 is one who can direct or influence the affairs of the company as distinguished from a mere compliance officer.

.....

.....

It is necessary to bring on record necessary material to establish that the appellant is either a director or an officer of the company. The adjudicating officer has failed in this regard....."

17. From the nature of duties and functions as mentioned above carried out by the Noticee during the relevant period, it cannot be concluded that the Noticee falls under the purview of Regulation 2(g) of PIT Regulations read with Section 2(30) of the Companies Act, 1956. In view of the above, I am compelled to hold that the Noticee is not guilty of violating the provisions of 13(4) read with Regulation 13(5) of the PIT Regulations.

ORDER

18. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I (2) of the SEBI Act, 1992, I hereby conclude that the charges leveled against the Noticee, Shri Mahendra Pandey do not stand established and the matter is, accordingly, disposed of.
19. In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: December 17, 2013

Place: Mumbai

**D SURA REDDY
ADJUDICATING OFFICER**