

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 93/2009]

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

In respect of

M/S ALPHA HI TECH FUEL LIMITED

(PAN. AAACA4258P)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation into the trading in the shares of M/s Alpha Hi Tech Fuel Limited (hereinafter referred to as “**Noticee/Company**”) for the period from November 24, 2004 to February 09, 2005 (hereinafter referred to as “**investigation period**”).
2. The investigation conducted by SEBI revealed that one of the promoter-directors, viz. Alpa Haren Shah (hereinafter referred to as “**AHS**”) sold 3,46,000 shares of the Company through six transactions between December 15, 2004 and January 25, 2005 through off-market. Bhanuben Jaisukhlal Shah (hereinafter referred to as “**BJS**”) sold 4,50,000 shares of the said Company through three transactions on December 04, 2004 and December 06, 2004

through off-market. Thus, in all, there were nine transactions – six in respect of AHS and three in respect of BJS – for which the Noticee was required to make disclosure under regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT**”). It was alleged that the Noticee had failed to make necessary disclosure in the specified format with regard to the aforesaid transactions to Bombay Stock Exchange (hereinafter referred to as ‘**BSE**’) resulting in violation of regulation 13(6) of PIT and consequently, liable for penalty under sections 15A (b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide order dated April 23 , 2008 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**Rules**’) to inquire into and adjudge the alleged violations of provisions of the aforesaid regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notice No. EAD-5/VSS/SS/133355/2008 dated July 29, 2008 (hereinafter referred to as “**SCN**”) was issued to the Noticee (hereinafter referred to as “**Noticee**”) under rule 4(1) of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed under section 15A (b) of SEBI Act for the alleged violations specified in the said SCN.

5. The Noticee replied vide letter dated August 11, 2008 furnishing, *inter alia*, details of the disclosure made by it to BSE and denied the allegations made against it.
6. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on April 01, 2009 vide notice dated March 12, 2009. Mr. Haren Shah, Authorized Representative, (hereinafter referred to as “AR”) appeared. During the hearing, the AR reiterated the submissions made vide letter dated August 11, 2008 and submitted, *inter alia*, as under:

- *It is submitted that the SCN dated July 29, 2008 issued by you alleges that the Noticee had not complied with the provisions of regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 with regard to 10 instances of transactions carried out by 2 entities belonging to the promoter group of the Noticee, viz., Alpa Haren Shah (AHS) and Bhanuben, Jaishuklal Shah (BJS). AHS had carried out 7 transactions and BJS had carried out 3 transactions, as per the aforesaid SCN. It is confirmed that these entities have made appropriate disclosures under the Insider Trading regulations to the Noticee, except by AHS in respect of her transaction of 2500 shares on 04.12.2004 which was sold to Pankaj Mangaldas. Therefore, the Noticee was required to disclose u/r 13(6) in respect of the 9 transactions. The details of disclosure made by the Noticee to BSE in compliance with 13(6) are as under:-*

AHS

<i>Date of intimation to Noticee</i>	<i>Date of intimation by Noticee to BSE</i>	<i>No. of shares transacted</i>	<i>Proof of delivery</i>
15.12.2004	16.12.2004	1,00,000	Sent through courier.
22.12.2004	21.12.2004	1,00,000	Sent through courier.
23.12.2004	24.12.2004	46,000	Sent through courier.
25.01.2005	25.01.2005	20,000	Hand delivery.
25.01.2005	25.01.2005	75,000	Hand delivery.
25.01.2005	25.01.2005	5,000	Hand delivery.

A copy of the aforesaid disclosures along with proof of delivery is submitted for your perusal and consideration. The original bearing the stamp of BSE for having received is also submitted for your perusal.

BJS

<i>Date of intimation to Noticee</i>	<i>of to</i>	<i>Date of intimation by Noticee to BSE</i>	<i>No. of shares transacted</i>	<i>Proof of delivery</i>
03.12.2004		03.12.2004	1,50,000	Hand delivery.
03.12.2004		03.12.2004	1,50,000	Hand delivery.
03.12.2004		03.12.2004	1,50,000	Hand delivery.

A copy of the aforesaid disclosures along with proof of delivery is submitted for your perusal and consideration. The original bearing the stamp of BSE for having received is also submitted for your perusal.

CONSIDERATION OF ISSUES AND FINDINGS

7. The issues that arise for consideration in the present case are :
 - a) Whether the Noticee had violated regulation 13(6) of PIT?
 - b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15A (b) of SEBI Act?
 - c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?
8. Before moving forward, it is pertinent to refer to the provisions of regulation 13(6) of PIT which reads as under:

Regulation 13: Disclosure by company to stock exchanges.

(6) Every listed company, within five days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub regulations (1), (2), (3) and (4) [in the respective formats specified in Schedule III.

9. The charge against the Noticee is that it had not made the disclosure in the prescribed format and with the result, had violated the provisions of regulation 13(6) of PIT. I find from the submissions of the Noticee that it has not disputed the fact that it had not made the disclosure in the specified format but has contended that it had made the disclosure through letters and this should be deemed to be in compliance with the provisions of regulation 13(6) of PIT. I have

carefully perused the copies of letters sent by the Noticee to BSE with regard to the aforesaid transactions along with the proof of delivery of such letters. Thus, there is no dispute on the fact that the Noticee had informed BSE. However, the issue for consideration is whether the disclosure made by the Noticee through letters can be considered as adequate compliance with the requirements of regulation 13 (6) of PIT in the absence of Form C and Form D.

10. The details in respect of three transactions of BJS ought to have been disclosed by the Noticee in Form C. The details contained in Form C, disclosures contained in the letter dated December 03, 2004 of the Noticee, status of compliance, etc., are as under:

SALE OF 4,50,000 SHARES BY BJS

SL. NO.	DISCLOSURE REQUIRED AS PER FORM C	DISCLOSURE MADE THROUGH LETTERS BY THE NOTICEE	STATUS OF COMPLIANCE
a)	Name and address of the shareholder	Bhanuben Jaisukhlal Shah	Name disclosed. Address not disclosed. Partly complied
b)	Shareholding prior to sale	Not given	Not complied
c)	No. and % of shares /voting rights sold	4,50,000 shares	Number disclosed. % not disclosed. Partly complied
d)	Receipt of allotment advice/acquisition of shares/sale of shares	3/12/2004	See remarks (III) below
e)	Date of intimation to company	-----	Not applicable
f)	Mode of acquisition on (market purchase/public/rights/preferential offer, etc.	Off-market	Complied
g)	No. and % of shares /voting rights post sale	Not given	Not complied

h)	Trading member through whom the trade was executed with SEBI registration No. of the trading member	-----	Not applicable
i)	Exchange on which the trade was executed	-----	Not applicable
j)	Buy quantity	-----	Not applicable
k)	Buy value	-----	Not applicable
l)	Sell Quantity	4,50,000	Complied
m)	Sell value	Not given	Not complied

(I) I find from the above that details of disclosure specified in (e), (h), (i), (j), (k) – 5 out of 13 - are not applicable. Details of disclosure specified in (f) and (l) - 2 out of 13 - have been complied by the Noticee.

(II) As regards disclosure with regard to Sl.No. (a) address of the shareholder, (b) shareholding prior to sale, (c) % of shares/voting rights sold, (g) No. and % of shares/voting rights post sale and (m) sale value, - 5 out of 13 - have not been complied by the Noticee.

(III) As regards the date of sale – Sl. No. (d) above – the same has been indicated as December 03, 2004 whereas it is observed from the copy of the Form C submitted by BHS to the Noticee that sale of 3,00,000 shares was effected on December 04, 2004 and 1,50,000 shares on December 06, 2004. Thus, to this extent, the Noticee has made a wrong disclosure.

11. The details of six transactions of AHS are as under:

Date of transaction	No. of shares sold	Date of disclosure by AHS to the Noticee
15/12/2004	1,00,000	15/12/2004
22/12/2004	1,00,000	22/12/2004

23/12/2004	46,000	23/12/2004
25/01/2005	20,000	25/01/2005
25/01/2005	75,000	25/01/2005
25/01/2005	05,000	25/01/2005

12. The details contained in Form D, disclosures contained in the letters of the Noticee dated December 15, 2004, December 21, 2004, December 23, 2004 and January 24, 2005 and the status of compliance, etc., are as under:

TABLE – 1 - SALE OF 1,00,000 SHARES ON 15/12/2004 BY AHS

SL. NO.	DISCLOSURE REQUIRED AS PER FORM D	DISCLOSURE MADE THROUGH LETTERS BY THE NOTICEE	STATUS OF COMPLIANCE
a)	Name and address of the Director	Alpa Haren Shah	Name disclosed. Address not disclosed. Partly complied
b)	No. and % of shares /voting rights held by Director	Not given	Not complied
c)	Date of receipt of allotment advice/acquisition/sale of shares/voting rights	15/12/2004	Complied
d)	Date of intimation to company	-----	Not applicable
e)	Mode of acquisition on (market purchase/public/rights/preferential offer, etc.)	Off-market	Complied
f)	No. and % of shares / post acquisition/voting rights sale	Not given	Not Complied
g)	Trading member through whom the trade was executed with SEBI registration No. of the trading member	-----	Not applicable

h)	Exchange on which the trade was executed	-----	Not applicable
i)	Buy quantity	-----	Not applicable
j)	Buy value	-----	Not applicable
k)	Sell Quantity	1,00,000	Complied
l)	Sell value	Not given	Not complied

(I) I find from the above that details of disclosure specified in (d), (g), (h), (i) and (j) – 5 out of 12 - are not applicable. Details of disclosure specified in (c), (e) and (k) - 3 out of 12 - have been complied by the Noticee.

(II) As regards disclosure with regard to Sl. No. (a) address of the shareholder, (b) No. and % of shares/voting rights held by the director, (f) No. and % of shares/voting rights post sale and (l) sale value, - 4 out of 12 - have not been complied by the Noticee.

TABLE - 2- SALE OF 1,00,000 SHARES ON 22/12/2004 BY AHS

SL. NO.	DISCLOSURE REQUIRED AS PER FORM D	DISCLOSURE MADE THROUGH LETTERS BY THE NOTICEE	STATUS OF COMPLIANCE
a)	Name and address of the Director	Alpa Haren Shah	Name disclosed. Address not disclosed. Partly complied
b)	No. and % of shares /voting rights held by Director	Not given	Not complied
c)	Date of receipt of allotment advice/acquisition/sale of shares/voting rights	21/12/2004	See remarks at (III) below
d)	Date of intimation to company	-----	Not applicable
e)	Mode of acquisition on (market purchase/public/right	Off-market	Complied

	s/preferential offer, etc.)		
f)	No. and % of shares / post acquisition/voting rights sale	Not given	Not Complied
g)	Trading member through whom the trade was executed with SEBI registration No. of the trading member	-----	Not applicable
h)	Exchange on which the trade was executed	-----	Not applicable
i)	Buy quantity	-----	Not applicable
j)	Buy value	-----	Not applicable
k)	Sell Quantity	1,00,000	Complied
l)	Sell value	Not given	Not complied

(I) I find from the above that details of disclosure specified in (d), (g), (h), (i) and (j) – 5 out of 12 - are not applicable. Details of disclosure specified in (e) and (k) - 2 out of 12 - have been complied by the Noticee.

(II) As regards disclosure with regard to Sl. No. (a) address of the shareholder, (b) No. and % of shares/voting rights held by the director, (f) No. and % of shares/voting rights post sale and (l) sale value, - 4 out of 12 - have not been complied by the Noticee.

(III) As regards disclosure with regard to date of sale – Sl. No. (c) above, the date of sale is mentioned as December 21, 2004 whereas the actual date of sale as disclosed by AHS to the Noticee was December 22, 2004. Thus, to this extent, the Noticee has made a wrong disclosure. Further, on perusal of the copy of the Form D submitted by AHS to the Noticee, I find that the sale as well as date of intimation to the Noticee was

December 22, 2004. However, I find from the document submitted by the Noticee that it had informed BSE of the said transaction on December 21, 2004 itself. Thus, there is discrepancy. The Noticee did not offer any explanation for this.

TABLE - 3- SALE OF 46,000 SHARES ON 23/12/2004 BY AHS

SL. NO.	DISCLOSURE REQUIRED AS PER FORM D	DISCLOSURE MADE THROUGH LETTERS BY THE NOTICEE	STATUS OF COMPLIANCE
a)	Name and address of the Director	Alpa Haren Shah	Name disclosed. Address not disclosed. Partly complied
b)	No. and % of shares /voting rights held by Director	Not given	Not complied
c)	Date of receipt of allotment advice/acquisition/sale of shares/voting rights	23/12/2004	Complied
d)	Date of intimation to company	-----	Not applicable
e)	Mode of acquisition on (market purchase/public/rights/preferential offer, etc.)	Off-market	Complied
f)	No. and % of shares / post acquisition/voting rights sale	Not given	Not Complied
g)	Trading member through whom the trade was executed with SEBI registration No. of the trading member	-----	Not applicable
h)	Exchange on which the trade was executed	-----	Not applicable
i)	Buy quantity	-----	Not applicable
j)	Buy value	-----	Not applicable
k)	Sell Quantity	46,000	Complied
l)	Sell value	Not given	Not complied

(I) I find from the above that details of disclosure specified in (d), (g), (h), (i) and (j) – 5 out of 12 - are not applicable. Details of disclosure specified in (c), (e) and (k) - 3 out of 12 - have been complied by the Noticee.

(II) As regards disclosure with regard to (a) address of the shareholder, (b) No. and % of shares/voting rights held by the director, (f) No. and % of shares/voting rights post sale and (l) sale value, - 4 out of 12 - have not been complied by the Noticee.

TABLE – 4 - SALE OF 1,00,000 SHARES ON 25/01/2005 BY AHS

SL. NO.	DISCLOSURE REQUIRED AS PER FORM D	DISCLOSURE MADE THROUGH LETTERS BY THE NOTICEE	STATUS OF COMPLIANCE
a)	Name and address of the Director	Alpa Haren Shah	Name disclosed. Address not disclosed. Partly complied
b)	No. and % of shares /voting rights held by Director	Not given	Not complied
c)	Date of receipt of allotment advice/acquisition/sale of shares/voting rights	24/01/2005	See remarks at (III) below
d)	Date of intimation to company	-----	Not applicable
e)	Mode of acquisition on (market purchase/public/rights/preferential offer, etc.)	Off-market	Complied
f)	No. and % of shares / post acquisition/voting rights sale	Not given	Not Complied

g)	Trading member through whom the trade was executed with SEBI registration No. of the trading member	-----	Not applicable
h)	Exchange on which the trade was executed	-----	Not applicable
i)	Buy quantity	-----	Not applicable
j)	Buy value	-----	Not applicable
k)	Sell Quantity	1,00,000	Complied
l)	Sell value	Not given	Not complied

(I) I find from the above that details of disclosure specified in (d), (g), (h), (i) and (j) – 5 out of 12 - are not applicable. Details of disclosure specified in (e) and (k) - 2 out of 12 - have been complied by the Noticee.

(II) As regards disclosure with regard to Sl. No.(a) address of the shareholder, (b) No. and % of shares/voting rights held by the director, (f) No. and % of shares/voting rights post sale and (l) sale value, - 4 out of 12 - have not been complied by the Noticee.

(III) As regards disclosure with regard to date of sale – Sl. No.(c) above, the date is mentioned as January 24, 2005 whereas the actual date of sale as disclosed by AHS to the Noticee was January 25, 2005. Thus, to this extent, the Noticee has made a wrong disclosure. Further, on perusal of the copy of the Form D submitted by AHS to the Noticee, I find that the sale as well as date of intimation to the Noticee was January 25, 2005. However, I find from the document submitted by the Noticee that it had informed BSE of the said transaction on January 24, 2005 itself. Thus, there is discrepancy. The Noticee did not offer any explanation for this.

13. The object of the PIT mandating disclosure of acquisitions beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. In terms of regulation 13(6) of PIT, disclosure is required to be made by the company to the stock exchange/s. "Disclose" according to Websters Encyclopedic Dictionary means - to make known, reveal or uncover – to cause to appear, allow to be seen, lay open to view. According to Blacks Law Dictionary "Disclosure" means – act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus, the requirement is that complete information should reach the person to whom it is meant. The obligation does not end by simply furnishing a part of the information through a letter when specific format for disclosure of full and complete information is prescribed for the purpose. The fact that complete information should be disclosed to the stock exchange/s is also evident from the provisions of clause 8 of Code of Corporate Disclosure Practices for Prevention of Insider Trading read with regulation 12(2) of PIT which casts an obligation on the stock exchanges to publish the information received from the companies on the website of the stock exchange instantly and disseminate the same to the investors in a quick and efficient manner through its network. Failure to disclose full details on the specific aspects provided in the regulation cannot be considered as trivial or of no consequence to be overlooked, as claimed by the Noticee.

14. In view of the above, I am not inclined to accept the contention of the Noticee that the disclosure made by it through the aforesaid letters can be considered as sufficient compliance with the requirements of provisions of regulation 13(6) of PIT.
15. Further, I have noted the submissions of the Noticee that BSE did not point out the deficiencies in compliance with the provisions of PIT by the Noticee, either at the time of making the disclosure or subsequently, including before granting listing permission for the bonus shares issued by the Noticee and therefore, the deficiencies should not be viewed as violation. The Noticee being a listed company was supposed to know the statutory requirements to be complied with in matters relating to disclosure. I am, therefore, of the view that merely because BSE did not point out the deficiencies in the compliance by the Noticee, the Noticee cannot be absolved of its violations specified above. Moreover, in three instances, I find that the Noticee had made wrong disclosure with regard to the actual date of sale and further disclosed to the stock exchange regarding the transaction even before it received the same from the concerned shareholder, as detailed above. These discrepancies raise a serious doubt on the authenticity of the disclosure itself made by the Noticee.
16. In view of the foregoing, I hold that the allegation of violation of the provisions of regulation 13(6) of PIT by the Noticee is established.
17. The next issue for consideration is as to whether the violation attracts monetary penalty under section 15A(b) of SEBI Act and if so, what would be the monetary penalty that can be imposed on the Noticee.
18. The provisions of section 15 A (b) of SEBI Act is reproduced here under :

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made there under,-

(a)

(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

(c)

19. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*.

20. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15A(b) of the SEBI Act.

21. While determining the quantum of monetary penalty under section 15A (b), I have considered the factors stipulated in section 15J of SEBI Act, which reads as under:-

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) *the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) *the repetitive nature of the default."*

22. The Hon'ble SAT, in Appeal No.66 of 2003 order dated April 15, 2005 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI*, has also observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature"*.
23. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of default by the Noticee, the details of the shareholding of the persons having substantial stake, promoter-group and persons in control over the Company and timely disclosure thereof, were of some importance from the point of view of investors as that would have prompted them to buy or sell shares of the Company. The disclosure made u/r 13(6) of PIT by a Company is made public only through Stock Exchange. Therefore, it is mandatory for the Company to give the required information under the aforesaid regulation to the Stock Exchange, so that the said information becomes known to all the investors at large. I find from the documents available on record that the disclosure under PIT was not displayed on the website of BSE due to the failure of the Noticee to comply with PIT. The object of the PIT mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. The purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. The Noticee could

not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures in accordance with the provisions of PIT, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosure, it had concealed the vital information from the investors. The Noticee had failed to make the disclosure in respect of 9 transactions during the investigation period which indicates the repetitive nature of its default.

ORDER

24. After taking into consideration all the facts and circumstances of the case and material available on record, I hereby impose a monetary penalty of Rs.5,00,000/- (Rupees five lakh only) on the Noticee which will be commensurate with the default committed by it.
25. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI- Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft shall be forwarded to Ms. Barnali Mukherjee, General Manager, Investigation Department - Division – ID8, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.
26. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 11, 2009
Place: Mumbai

V.S.SUNDARESAN
ADJUDICATING OFFICER