

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD-2/AO/ 108 /2012]**

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**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) decided on Appeal No. 178 of 2011, vide order dated December 22, 2011 by setting aside the adjudication order no. PKB/AO-38/2011 dated June 28, 2011 and remanding the case back to the Adjudicating Officer to proceed afresh in accordance with law on the ground that the findings recorded by the adjudicating officer failed in specifically answering the charges leveled against Shri Mahendra Pandey (hereinafter referred to as the 'Noticee') in the show cause notice (SCN) in the matter of Alka Securities Ltd. (hereinafter referred to as 'ASL').

**Notice, Reply & Personal Hearing:**

2. SEBI vide Order dated April 16, 2012 appointed the undersigned as the Adjudicating Officer (AO) 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. Accordingly the undersigned issued a notice dated May 30, 2012 (hereinafter referred to as the 'SCN') to the Noticee in terms of Rule 4 of the Adjudication Rules requiring to show cause

as to why an inquiry should not be held against him for the alleged violations. The SCN alleged that the Noticee being a promoter and holding various positions in ASL is an officer in terms of definition provided under Regulation 2(g) of the PIT Regulations read with Section 2(30) of the Companies Act, 1956 during the investigation period and had traded in the shares of the company in quantities of 25000 shares and above but failed to make disclosures as required under Regulation 13(4) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations').

3. The SCN was duly delivered to the Noticee. However, the Noticee did not reply to the SCN. 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 vide notice dated August 28, 2012 on September 13, 2012. The Noticee vide his letter dated September 13, 2012 informed that he was not feeling well and requested for another date of hearing. Accordingly, another opportunity of hearing was granted to the Noticee vide notice dated September 21, 2012 on October 08, 2012. The Noticee vide letter dated October 08, 2012, informed that as his Advocate could not attend the matter due to his personal reasons, he had appointed another Advocate and he requires one month's time for preparation of reply and final hearing. He also stated that he is making the request second time and the next date be the last and final. Moreover, as his car met with an accident he could not reach SEBI office personally.
4. In view of the said request, another opportunity of personal hearing was granted to him on November 02, 2012. The hearing notice was duly delivered to the Noticee on October 18, 2012 and a postal acknowledgment to this effect is available on record. The Noticee vide e-mail dated November 08, 2012 stated that since he had not received any communication, he had sent his person, Pandhuranga who informed him that the hearing was fixed on November 02, 2012. So he requested for another hearing to represent his case. The Noticee vide his letter dated November 12, 2012 made written submissions. Therefore, another opportunity of hearing was granted to the

Noticee on November 19, 2012 vide notice dated November 12, 2012. However, the Noticee neither attended the said hearing nor made any correspondences in this regard.

5. In view of the above, I note that ample time and opportunities were given to the Noticee to appear for personal hearing and present his case in this matter to meet the ends of natural justice. Therefore, I am proceeding with the inquiry taking into account the documents and material as available on record.

### **Consideration of Issues, Evidence and Findings**

6. I have carefully perused the charges against the Noticee as per the SCN, written submissions 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?**

7. 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.*

8. 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 Rs. 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 days working days of receipt of intimation of allotment of shares or the acquisition or sale of shares or voting rights.
9. The Noticee in his reply submitted that he has ceased to be a director of ASL with effect from September 25, 2001. The Noticee has also submitted the Form 32 which was submitted to the Registrar of Companies along with the acknowledgement. Therefore, the Noticee states that he was not a director of the company during the investigation period. Further, the Noticee 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 stated that he was in no position to direct or influence the affairs 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.** I find that there were no allegations in the SCN that the Noticee is a director, auditor or secretary of ASL. Therefore, the submissions of the Noticee in this respect are extraneous. It is stated in the SCN that he 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. Further, vide e-mail dated January 20, 2012, the National Stock Exchange (NSE) has provided the document which states that the Noticee was the Chief Executive/Managing Partner/Proprietor of ASL as on March 2000. Further, the e-mail dated January 20, 2012 from NSE also states that the Noticee is the Chief Executive Officer (CEO) of ASL as per their Membership Database. BSE vide 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) Regulation, 1997.
- 11.** From the nature of duties and functions as mentioned above carried out by the Noticee during the investigation period, it is evident that the Noticee falls under the purview of Regulation 2(g) of PIT Regulations and that he is an "officer" as defined in Section 2(30) of the Companies Act, 1956.
- 12.** The next question is that whether the Noticee traded in the shares of ASL resulting in change which exceeds Rs. 5 lakh in value or 25,000 shares or 1%

of total shareholding or voting rights, whichever is lower. I find from available records that the Noticee had bought/received a total of 523690 shares and sold/transferred a total of 804490 shares of ASL during the investigation period 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 is 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. It is evident that there was a change in the shareholding of the Noticee as he sold/transferred more than 25000 shares of ASL on three occasions and also bought/received more than 25000 shares of ASL on four occasions.

13. From the forgoing, In view of the positions he was holding in ASL, upon acquiring/ receiving or selling/transferring the shares over and above 25000 in number on the abovementioned occasions, he was required to make the necessary disclosures to the company and the stock exchange which he failed to do and thereby violated the provisions of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations warranting imposition of monetary penalty.

14. Section 15A (b) of the SEBI Act, reads as under:

**15A. Penalty for failure to furnish information, return, etc.**

*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.*

15. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Funds [2006] 68 SCL (216) SC held that " *once a violation of statutory regulation is established, imposition of penalty becomes sine qua non of violation and the intention of the parties committing such violation becomes totally irrelevant. Once the contravention is established then penalty is to follow*".

16. While determining the quantum of penalty under section 15A(b) of the SEBI Act, it is important to consider the factors stipulated in section 15J of the 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.*

17. I observe that from the material available on record it is difficult to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default of the Noticee or to ascertain whether the defaults are repetitive in nature. Since, the Noticee is the promoter and Principal Officer of a SEBI registered intermediary, he is vested with a higher responsibility to make timely disclosures and adhere to the various rules and regulations under the securities laws. Therefore, the defaults by the Noticee need to be viewed seriously.

**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 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 10,00,000 (Rupees ten lakh only) on Shri Mahendra Pandey

under Section 15A(b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.

19. The penalty amount as mentioned above shall be paid by the Noticee through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, IVD-ID6, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
20. In terms of the Rule 6 of the Adjudication Rules, copies of this order is sent to the Noticee and also to Securities and Exchange Board of India.

**Date: December 17, 2012**

**Place: Mumbai**

**P K KURIACHEN  
ADJUDICATING OFFICER**