BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 48/2009]

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

Alka India Limited

(PAN. AABCA6702F)

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 Alka India Ltd.,** formerly known as Alka Spinners Ltd. (hereinafter referred to as **"The Company/AIL"**) for the period from August 14, 2003 to March 26, 2004 (hereinafter referred to as **"investigation period"**).

2. Pursuant to the investigation, It was observed that Satish Pancharia, Director and belonging to the Promoter group of AIL, had sold 64,99,971 shares aggregating 2.6% of equity capital of AIL during the period January 9 to January 13, 2004. As per the Company, he had made necessary disclosures under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT")** on January 15, 2004. It was observed that the Company had failed to

make necessary disclosure under regulations 13(6) of PIT with regard to the aforesaid sale of shares by Satish Pancharia to Bombay Stock Exchange (hereinafter referred to as **'BSE'**) and Ahmedabad Stock Exchange (hereinafter referred to as **'ASE'**). The same is confirmed by BSE and ASE vide their letters No. DCS/SKJ/RCG/58/ 2008-09 and ASE/SUR/0809/SEBI/Alka India Ltd./ dated July 11, 2008 and July 15, 2008, respectively. Consequently, it was alleged that AIL was 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 October 10 , 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/TZ/151269/2009 dated January 20, 2009 (hereinafter referred to as **"SCN"**) was issued to AIL (hereinafter referred to as **"Noticee"**) under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed under section 15A (b) of SEBI Act for the alleged violations specified in the said SCN.

5. The Noticee vide letter dated January 27, 2009 replied to the SCN stating, inter alia, the following:

"…*we have submitted to the stock exchanges disclosures under Insider trading Regulations from the company regarding the sale of shares by the promoters through the courier relying upon the evidence being the copy of Courier receipt."*

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 March 09, 2009 vide hearing notice dated February 25, 2009. Ms. Mona Vora, Authorized Representative, (hereinafter referred to as "**AR**") appeared. During the hearing, the AR reiterated the submissions made vide letter dated January 27, 2009 and was asked to furnish documentary proof of delivery at the ASE and BSE, of the disclosure claimed to be made by the Ntoicee under regulation 13(6) of PIT. The Noticee vide its letter dated March 16, 2009 submitted that *"pursuant to the provisions of Sections 17 of the Companies Act, 1956 the registered office of our company stands transferred from the State of Gujarat to the State of Maharashtra. During the course of transfer some of the files which were misplaced and due to that reason we are unable to give proof of delivery at the ASE. For BSE we have submitted the same through courier and have only the courier receipt of the same and not the acknowledge copy of the same which already submitted to your good self"*

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: <u>Disclosure by company to stock exchanges</u>.***
>
> *(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. I have noted the contention of the Noticee that they have made the necessary disclosure u/r 13(6) of PIT to BSE which has been sent through courier. On the other hand, I have also noted that BSE and ASE vide letters No. DCS/SKJ/RCG/58/ 2008-09 and ASE/SUR/0809/SEBI/Alka India Ltd./ dated July 11, 2008 and July 15, 2008, respectively, have denied having received any intimation from the Noticee under regulation 13(6) of PIT.

10. During the hearing held on March 9, 2009 the Noticee produced the courier receipt addressed to BSE for verification. I have perused the said courier receipt. This, at best, could be considered as proof of dispatch of the intimation. The Noticee could not produce any acknowledgement in support of delivery of the said intimation. In this regard, the denial of receipt of any such intimation by the stock exchanges assumes significance. Moreover, the Noticee vide its letter dated March 16, 2009 submitted that it has misplaced the said proof of delivery to ASE and BSE in transit, during the shifting of the office from State of Gujarat to the State of Maharashtra.

11. In this regard, it will be appropriate to refer to the observations of The Hon'ble High Court at Calcutta in Writ Petition 331/2001 in the matter of ***Arun Kumar Bajoria v/s SEBI*** – Order dated March 27, 2001. The Hon'ble Court while examining the issue of compliance with regard to regulation 7 (the provision deals with disclosure by an acquirer to the target company) of SAST, made the following observations:-

> *"…… Therefore, it is obligatory on the part of the person so acquiring to inform the company. In what mode or manner such information should be given has not been prescribed. It has not also been mentioned that the subject information or disclosure must be given in writing. Such disclosure, therefore, may be made orally or through telephone or in writing transmitted in some known manner. The information or disclosure must, however, reach the company. In law, anyone sending a written information through the agency of someone else, appoints such agency as his agent. If a letter is posted, unless the law specifies, the Postal Authority acts as an agent of the sender. As appears to me, by law, in respect of two instances the post office is considered as the agent of the receiver of the letter. The first is in relation to acceptance of an offer and the second is in respect of a letter sent by registered post. In all other circumstances, the post office acts as a mere agent of the sender of the letter.* ***The Certificate of Posting may be an evidence of engaging the Postal Authority as an agent of the sender to deliver the subject letter, but not the proof of receipt of the letter by the addressee****. In the event, it is contended by the addressee that the letter has not been received by him, it must be established and if necessary through the agent that the letter has been received by the addressee. Merely because the letter was sent by post, it cannot be contended that the sender has discharged his obligations under Regulation 7 of the said Regulations as the said regulation cast the duty and obligation upon the acquirer to ensure receipt of the disclosure or information by the company concerned and argument contrary thereto is not acceptable. It is not permissible for the sender to contend that he has no control over the mode of transmission inasmuch as he has free choice of selecting the mode of transmission and for that purpose to engage a suitable agent."*

12. If the provisions of regulation 13(6) of PIT are tested with the touchstone of the observations of the Hon'ble High Court referred to above, it would follow that it is the responsibility of the sender to establish and if necessary, through the agent, that the letter has been

received by the addressee. Thus, the burden of proving the receipt of the communication sent is upon the Noticee.

13. Thus, the allegation of violation of the provisions of regulation 13(6) of PIT as mentioned in the SCN dated January 20, 2009 stands established. The non-compliance with the provisions of regulation 13(6) of PIT attracts monetary penalty under section 15 A (b) of SEBI Act , which reads as 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 thereunder,-*
> *(a) ….*
> *(b) To file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return furnish the same within the time specified therefore 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*

14. 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…".*

15. While determining the quantum of penalty under section 15A (b), it is important to consider 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."

16. 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".*

17. 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. 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 on time, 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.

ORDER

18. After taking into consideration all the facts and circumstances of the case and on a judicious exercise of the powers conferred upon me, I hereby impose a monetary penalty of Rs.1,50,000/- (Rupees One Lakh Fifty thousands only) on the Noticee which will be commensurate with the violation committed by it.

19. 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 should be forwarded to Dr. (Ms.) Pradnya Saravade, Officer on Special Duty, Investigations Department – ID1, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

20. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: April 9, 2009 **V.S.SUNDARESAN**
Place: Mumbai **ADJUDICATING OFFICER**