BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PKB/AO–36/2011]

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:
Smt Alka M Pandey
(PAN – AGEPP1076H)
In the Matter of: Alka Securities Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed a sudden spurt in the price and trading volumes in the shares of Alka Securities Limited (hereinafter referred to as "**the Company**"). It was observed that large volume of off market transfers in the shares of the Company were executed and on many occasions the Promoters of the Company were also involved in the off market transfers and these shares were subsequently traded at Bombay Stock Exchange (hereinafter referred to as "**BSE**").

2. SEBI conducted detailed investigations in respect of dealings in the scrip of the Company during the period from September 2008 to July 2009 (hereinafter referred to as the "**investigation period**"). It was observed that before the investigation period, the price of the scrip of the Company moved from ₹ 27.45 on August 1, 2008 to ₹ 31.25 on August 29, 2008 and the average volume was 1,25,663 shares per day. It was also observed that during the investigation period the average volume was 2,62,382 shares per day (adjusted downwards for split). It was further observed that after the investigation period the price of the scrip (face value ₹ 1/-) fell to ₹ 13.61 on August 3, 2009 and then to ₹ 6.70 on August 31, 2009 and average volumes was 2,04,771 shares (adjusted for split) per day. It was observed that the price of the scrip of the Company as on March 19, 2010 was at ₹ 6.10.

3. It was observed on the analysis of the beneficial owner accounts of the promoters in the depository system and information obtained from Registrar & Share Transfer Agent [Purva Sharegistry (India) Pvt. Ltd.] (hereinafter referred to as the "**R&TA**") that the shareholding pattern disclosed by the Company to BSE was significantly different from the actual shareholding, particularly with respect to the promoters. It was observed from details submitted by R&TA that Anjuben Kothari, Brijesh Kothari and Dimple Kothari were not holding any shares during the investigation period while the disclosure made by the Company to BSE showed that Anjuben Kothari, Brijesh Kothari and Dimple Kothari were holding shares of the Company as on quarter ending September 2008 and December 2008. Actual holding of Mayuresh Estate agent was 10,00,000 shares at the end of June 2008. While in the disclosure to the BSE it was shown as 40,00,000 shares for the end of September 2008 and December 2008 quarters. Mayuresh Real Estate Management Pvt. Ltd. transferred 10,00,000 shares to Alka Pandey in physical form on July 15, 2008.

4. The Company had submitted shareholding pattern for quarter ended June 2008 on July 25, 2008, for quarter ended September on October 29, 2008, for quarter ended December 2008 on March 2, 2009, for quarter ended March 2009 on May 13, 2009 and for quarter ended June 2009 on September 9, 2009. It was observed that in the shareholding pattern of the promoters, 'public shareholding more than 1%' and 'Public Shareholding less than 1%' there was a huge difference in the actual holding and what was disclosed by the Company. It was alleged that despite the actual steep reduction in the promoter shareholding, the Company/promoters had made an attempt to mislead the shareholders and investors by making inflated and palpably incorrect disclosures to BSE. It was also alleged that the mandatory quarterly disclosures of shareholding pattern to the public through the disclosures made to BSE were incorrect. It was further alleged that by misreporting such price sensitive information the Company had sent misleading signals to the market since the promoters' holding was shown to remain unchanged over the relevant period while the promoters had substantially reduced their holding during that period, thereby misleading then investors with false information.

5. It was observed that the Company vide their letter dated March 17, 2010 had reported to SEBI that Ms. Alka Pandey (hereinafter referred to as "**Noticee**") had pledged 1,92,99,631 shares (all dematerialized) on year ended March 31, 2009 and the disclosure

for the same was made by the Company to BSE only on May 13, 2009. However, the demat statement (for account IN300020 – 10000543) of the Noticee showed a holding of only 62,15,445 shares as on March 31, 2009. It was observed that the relevant shares were actually transferred by Dena Bank to various persons. It was further observed that the procedure for pledging of demat shares as laid down within the bye-laws of the Depositories framed under the Depositories Act, 1996 and SEBI (Depositories and Participants) Regulations, 1996 specifies that shares pledged have to be identified separately as 'pledged' shares. However, no such 'pledge' was seen identified in the demat statement of the Noticee, and thus it was alleged that the disclosures made by the Company to BSE were factually incorrect and mislead the investors by indicating that the promoter was holding on to the referred large quantity of shares.

6. It was alleged that the Noticee was the Managing Director of the Company for the investigation period and by employing manipulative and deceptive device of reporting information which was not true and planting false/misleading disclosures, the Noticee acted in contravention of the provisions of the SEBI Act, 1992 and rules and regulations made thereunder. It was also alleged that the false/misleading disclosures and reporting resulted in sale/purchase of the shares of the company based on false disclosure/information and that the activities of the Noticee were devices to manipulate the dealing in the scrip of the company.

7. It was observed that, the Noticee was holding 1,25,20,445 shares (25.04 % of the paid up capital of the Company) as on October 17, 2008. It was also observed that the Noticee dematerialized 1,15,00,000 shares and 4,05,000 shares into her DP ID IN300020 – 1000543. It was alleged that the Noticee, as a Managing Director, traded substantially in the shares of the Company, but failed to make disclosures as required under the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the "**PIT Regulations**") and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 (hereinafter referred to as the "**SAST Regulations**"); details of which are as follows:

Alka Pandey (Promoter & Managing Director)

Date	Sold/transferred	Bought /received	% of the paid up Capital (Residual shareholding)	Violations observed SAST/PIT
21-Oct-2008	1000000	0	2.00 (23.04)	7(1A)/13(4)
04-Dec-2008	2500000	0	5.00 (18.04)	7(1A)/13(3),(4)
10-Dec-2008	4200000	0	8.40 (9.64)	7(1A)/13(3),(4)
09-Jan-2009	625000	0	1.25 (8.39)	13(4)
13-Jan-2009	0	625000	1.25 (9.64)	13(4)

14-Jan-2009	625000	0	1.25 (8.39)	13(4)
28-Jan-2009	900000	0	1.80 (6.59)	13(4)
09-Feb-2009	0	560000	1.12 (7.71)	13(4)
19-Feb-2009	500000	0	1.00 (6.71)	13(4)
24-Mar-2009	0	2500000	5.00 (11.71)	7(1A)
26-Mar-2009	25000	0	0.05 (11.06)	13(4)

8. The undersigned was appointed as the Adjudicating Officer vide Order dated March 31, 2010 to inquire into and adjudicate under Section 15HA and Section 15A(b) of the SEBI Act, 1992, the alleged violation of provisions of Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**") and also alleged violation of provisions of Regulation 13 (3) and 13 (4) read with 13 (5) of PIT Regulations and Regulation 7 (1A) read with 7 (2) of SAST Regulations done by the Noticee.

SHOW CAUSE NOTICE, HEARING & REPLY

9. A Show Cause Notice (hereinafter referred to as "**SCN**") in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") was issued to the Noticee on July 20, 2010, calling upon him to show cause why an inquiry should not be held against her under Rule 4(3) of the Adjudication Rules for the alleged violations.

10. The Noticee vide letter dated July 23, 2010 acknowledged the receipt of the SCN and informed that she would be opting for consent proceedings in the matter. Subsequently, the Noticee filed the consent application with SEBI. However, as no reply was received form the Noticee, Notice of Inquiry dated January 20, 2011 was issued to the Noticee under Rule 4(3) of the Adjudication Rules vide which an opportunity of personal hearing was given to the Noticee which was scheduled for February 07, 2011. The Noticee was advised to submit reply, if any, on or before the date of hearing and was also informed that notwithstanding application for consent order, the Adjudication Proceedings would continue and the passing of the appropriate Adjudication Order would be kept in abeyance till the conclusion of consent proceedings.

11. The Noticee vide letter dated January 31, 2011 acknowledged the receipt of the Notice of Inquiry dated January 20, 2011 and submitted that *"Whole Time Member, Mr. Prashant Saran had passed an order in the matter dated 30 December 2010 and the said order deals with*

the same matter and clauses concerning the Show Cause Notice dated July 20, 2010" and also requested for termination of the Adjudication Proceedings. Thereafter, vide letter dated February 02, 2011, the Noticee was informed that the Proceedings concluded by the Order of the Whole Time Member, Shri Prashant Saran dated December 30, 2010 as referred by her and the present Adjudication Proceedings initiated by the undersigned vide SCN dated July 20, 2010 were two separate and independent civil proceedings. Vide the said letter dated February 02, 2011, the Noticee was once again advised to appear before the undersigned for personal hearing on February 07, 2011 as previously informed vide Notice of Inquiry dated January 20, 2011 and to submit reply, if any, on or before the aforesaid date of personal hearing.

12. Thereafter, vide letter dated February 07, 2011 the Noticee requested for 2-3 days time for filing of written reply and also requested for another opportunity of personal hearing. Vide letter dated February 08, 2011 the Noticee alongwith Shri Mahendra Pandey, Shri Brijesh Kothari, Shri Mahesh Kothari and Mahesh Kothari Share & Stock Brokers Pvt. Ltd. made certain common submissions and stated that the Whole Time Member of SEBI had passed an order in the matter dated December 30, 2010 and that they cannot be vexed twice for the same allegations and based on the same set of facts. In this regard I note that in the aforesaid order dated December 30, 2010, the Whole Time Member of SEBI has, *inter-alia*, mentioned in paragraph 8 that Adjudication Proceedings against the Noticee have been initiated and consequently, the issues raised in the same has not been dealt with in the order dated December 30, 2010. Para No. 8 of the order dated December 30, 2010 of the Whole Time Member states as below:

> *"8. I note that after the completion of the investigation, the charges finalized against Mahesh Kothari Shares & Stock Brokers Private Limited (hereinafter individually referred to as 'MKSSBPL') as broker have been referred to proceedings under intermediary regulations and proceedings against it for non compliance of summons have been initiated under Adjudication. I observe that Adjudication proceeding are also pending against Alka Pandey, Brijesh Kothari, Mahendra Pandey and Mahesh Kothari. It is noted that these charges have also germinated from the interim order dated July 28, 2009 as mentioned earlier which was later confirmed on October 16, 2009 under section 11(4) and 11(b). I am limiting my inquiry to the remaining charges brought out under the SCN dated August 31, 2010."*

13. Hence, it is apparent that the proceedings concluded by order dated December 30, 2010 and the present Adjudication Proceedings are two separate and independent proceedings dealing with different allegations. Further, vide letter dated February 08, 2011 the Noticee reiterated her request for another opportunity of personal hearing. Accordingly, another opportunity of personal hearing was granted to the Noticee vide Notice of Inquiry dated February 15, 2011 and the Noticee was advised to attend the

hearing on February 23, 2011. However, none appeared for the hearing on the scheduled date. Vide letter dated February 23, 2011, the Noticee requested for adjournment of the personal hearing "*to any day in the coming week*". The Noticee's request for adjournment was duly considered and vide letter dated February 23, 2011 the Noticee was advised to appear for personal hearing on March 03, 2011. Subsequently, vide letter dated March 03, 2011, Mr. Sean Wassoodew, the Advocate of the Noticee, requested another date for personal hearing.

14. In the interest of natural justice and in order to conduct a fair inquiry, one last and final opportunity of personal hearing was granted to the Noticee vide Notice of Inquiry dated March 21, 2011 and the Noticee was advised to appear on April 07, 2011. However, on April 07, 2011, Mr. Anirban Tripathy, the Advocate of the Noticee submitted a letter dated April 06, 2011, wherein Shri Mahendra Pandey on behalf of the Company and all the promoters of the Company submitted that they had lost their office copy of reply dated February 08, 2011 in transit to their advocate's office and requested for a copy of the said reply dated February 08, 2011. Accordingly, on April 07, 2011, a copy of the reply dated February 08, 2011, along with all its annexures, as submitted by the Noticee, was handed over to Mr. Anirban Tripathy, the Advocate of the Noticee, and the acknowledgement thereof is available on record.

15. In this regard, I note that subsequent to the reply dated February 08, 2011, sufficient time and opportunities were given to the Noticee to appear for personal hearing and make further submissions in this matter in compliance with the principles of natural justice. I also note that in total, the Noticee was given four opportunities of personal hearing and the Noticee has failed to avail the opportunity on all occassions. I further note that till date, the Noticee has not made any further submissions before me. Therefore, I note that the principles of natural justice have been duly complied with. Subsequently, SEBI has also informed that the consent application of the Noticee has been rejected. Hence, I am proceeding with the inquiry taking into account the material available on record.

ISSUES FOR CONSIDERATION

16. After perusal of the material available on record, I have the following issues for consideration, viz.,
    A. Whether the Noticee has violated provisions of Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f) and 4(2)(r) of PFUTP Regulations?

B. Whether the Noticee has violated provisions of Regulation 13 (3) and 13 (4) read with 13 (5) of PIT Regulations and Regulation 7 (1A) read with 7 (2) of SAST Regulations?

C. Whether the Noticee is liable for monetary penalty under Section 15HA and Section 15A(b) of the SEBI Act, 1992?

D. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

17. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticee has violated provisions of Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f) and 4(2)(r) of PFUTP Regulations?

18. Before proceeding further, it will be appropriate to refer to the provisions of Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f) and 4(2)(r) of PFUTP Regulations which read as follows:

SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

Prohibition of certain dealings in securities

Regulation 3: No person shall directly or indirectly—

(a) Buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c) Employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

Regulation 4: Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(e) any act or omission amounting to manipulation of the price of a security;

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(r) planting false or misleading news which may induce sale or purchase of securities.

19. In response to the observations and allegations against the Noticee, the Noticee alongwith Shri Mahendra Pandey, Shri Brijesh Kothari, Shri Mahesh Kothari and Mahesh Kothari Share & Stock Brokers Pvt. Ltd. vide letter dated February 08, 2011, inter alia, made certain common submissions which are as follows:

- *With reference to paragraphs 2 and 3 of the show cause notice, the same are in the nature of preliminaries and we are therefore advised not to deal with the same in detail. Suffice it to say that, though the initial investigation was directed into the alleged spurt in prices and volumes during November 2008 to March 2009, and the investigation was confined to such period, it appears that you have referred and relied upon various information and details pertaining to the period from September 1, 2008 and after March 2009. It is not understood how you have relied upon information beyond this period. In fact, if the period from 1 September 2008 is to be considered when the closing price of the scrip was Rs. 32.45 and the price of Rs. 32.05 as on 25 May 2009 (adjusted for split) is considered, it is clear that there has been no material change in the price of the scrip. The subsequent fall in the price of the scrip is obviously caused by the ex parte ad interim order passed by the Whole Time Member on 28 July 2009 which severely disrupted our business operations and created fear psychosis in the clients as well as the market. It is further apparent that even after the ex-parte ad interim order which resulted in restraints being placed on several investors who were previously active in the said scrip, the volumes were not significantly different.*
- *With reference to paragraph 4, we say that some of the promoters had pledged the shares of Alka Securities Ltd. (ASL) initially with M/s Dena Bank as far back as 1999 for credit facility availed of by one Ashwini Trading. The shares remained pledged with the said Dena Bank who had obtained a recovery certificate against M/s Ashwini Trading and only upon settlement of the dues of M/s Dena Bank the shares were released from the pledge and pledged to certain other entities at the request of the promoters. We are enclosing as Annexure "A1" a chart showing the various shares which were at the request of the promoters released from the Pledge of M/s. Dena Bank and pledged with other entities who had agreed to finance the promoters as against the shares pledged with them. In fact, the various entities had only paid an amount of Rs. 1.60 per share towards the shares pledged with them as against the market price of the shares which was in the range of Rs. 20 – Rs. 30 at the relevant time. This will clearly demonstrate that there was no transfer of the shares by the promoters but it was a mere Pledge. We are fortified in our submissions by the fact that the said pledgees continue to hold the pledged shares with them intact till date. We have been continuously monitoring the shares pledged and for this purpose had called upon the pledgees to retain the said shares in a separate demat account to enable us to monitor such pledged shares. A statement showing the shares pledged with various entities and their holding in the said demat accounts as on date which remains unchanged which is annexed hereto as Annexure "B" will more than adequately demonstrate that the shares were merely pledged and not transferred. This is further clear from the fact that the promoters have consistently disclosed the said shares as pledged shares in the shareholding pattern filed before the Bombay Stock Exchange. Dena Bank was never the owner of the said shares but was a mere pledgee. This is clear from the correspondence with Dena Bank. Merely because as a pledgee under the Pledge agreements, Dena Bank started disposing of the pledged shares would not confer status of ownership of the said shares on M/s. Dena Bank. Moreover, Dena Bank itself has clarified that upon payment of the OTS amount the "securities" were*

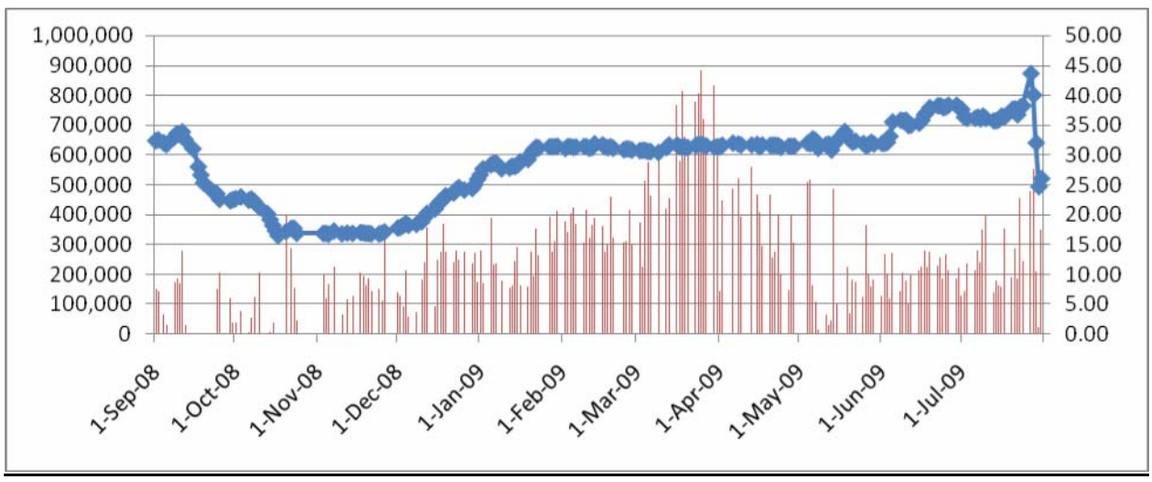
required to be released. If Dena Bank was the owner of the said shares, the question of release of the securities could and would never arise.

- *We are enclosing as Annexure C to C certified copies of the beneficiary position of various holders of shares of Alka Securities Ltd. as on 31 March 2009, 30 June 2009, 25 September 2009, 25 December 2009 and 31 March 2010 duly certified by the share registrar of the company viz: M/s Purva Share Registry (I) Pvt. Ltd. From the said list we have compiled a list of the persons to whom the shares which were previously pledged with Dena Bank have thereafter been pledged. There are two lists for each quarter, one containing 122 names and the other containing 108 names. A total of 13637513 shares have been pledged to the aforesaid 230 entities as on 31 March 2009. After the stock split the number of shares held by the pledgees has doubled and up to 31st March 2010 the pledged shares have remained intact.*
- *With further reference to paragraph 4 to 9, we respectfully submit that the shareholding pattern of Alka Securities Ltd. (ASL) has been erroneously recorded. We respectfully submit that till 28 January 2009 there was no requirement to disclose pledged shares separately. With the result, there was no separate disclosure of pledged shares by the promoters up to 31st December 2008. Thereafter for the quarters ended 30th March 2009 and 30th June 2009 we have separately disclosed the pledged shares. The discrepancy in figures between the shares disclosed and the actual shares held, (which appears to have been culled from the figures provided by the registrar and transfer agent) is on account of the pledged shares which have been clearly disclosed before the Bombay Stock exchange in the filing of the shareholding pattern. Hereto annexed as Annexures D1 to D5 are the disclosures made to the Bombay Stock Exchange by the promoters for the relevant period, which have been duly reflected in the details of ASL by the Bombay Stock Exchange on its website which will clearly show that the discrepancy between disclosed and actual is on account of pledged shares. If the figures of pledged shares are considered as on 30 June 2008, 30 September 2008 and 31 December 2008 and compared with figures as on 30 March 2009 and 30th June 2009 it will be clear that the discrepancies are in respect of pledged shares only. Further, shares held by Mahesh Kothari Share & Stockbrokers Ltd (MKSSBL), a broker on the Bombay Stock Exchange and one of the promoters of ASL in it's client beneficiary account (wherein the shares of clients are retained pending disbursal) are also included in the promoters shareholding, whereas the shares actually belonged to the clients of MKSSBL. The correct position and reconciliation is as stated in the Annexure E1 to E1 hereto. Thus, the promoters have not misled any shareholders and investors by making inflated and incorrect disclosures to BSE, neither the disclosures made to BSE were incorrect. As there is no such misreporting there are no misleading signals sent to the market about "price sensitive information".*
- *To summarize our contentions we have to submit as under:*
    - *The shares were pledged with Dena Bank as security for loans taken by Ashwini Trading Private Limited way back in 1999. The bank had merely held the shares as security and the shares were at no time actually transferred to the bank but held by the bank on the terms and conditions of the pledged document. Merely because the bank had a right to sell the shares under the pledge document, in event of default, would not constitute the bank as the owner of the said shares but the said clause in the pledge document merely reiterates what is set out in Section 176 of the Indian Contract Act viz: that the pledgee may sell the pledged goods after giving sufficient notice to the pledgor. The right of a pledgee to sell goods which is incorporated in Section 176 of the Contact Act cannot make a pledgee the owner of the pledged goods.*
    - *Merely because there is a failure to comply with Regulation 58 of the Depositories Participants Regulations would not have the effect of converting the pledge into a transfer. At the highest, it can be said that the pledge is irregular.*
    - *The requirement to separately disclose pledged shares came only in January 2009 after the Satyam case. Thereafter, the statements submitted to the stock exchange concerned, correctly reflect the pledged shares separately. The difference between the actual shareholding and the disclosed shareholding is nothing but the difference because the pledged shares have not been considered by SEBI as the holding of the promoters. In addition, there is a difference because SEBI has treated the shares held*

in the client beneficiary account of MKSSBL as shares belonging to promoters, whereas in fact, the said shares lying in the client beneficiary account are the shares of clients and not of the promoters. This explains why the difference between actual and disclosed share holding (which includes pledged shares) is not constant though as stated by us the shares pledged has remained virtually constant. In the actual shareholding as set out by SEBI, shares held by MKSSBL in it's client beneficiary account are also included.

- *that the shares are pledged and not transferred is evident from:*
  - *periodic (quarterly) disclosure to the stock exchanges of the pledged shares;*
  - *the holding of the pledgees remains virtually intact till date as evident form Annexure B hereto.*
  - *Statements extracted from the shareholding pattern supplied by the Share Registrar of ASL, copies of which are also annexed as Annexures C hereto*
  - *Only Rs. 1 60 per shares was received by the pledgors against the pledged shares though the market price of the shares was between Rs. 20 and 30 at the said time.*

20. From the material available on record, it is observed that before the investigation period, the price of the scrip of the Company moved from ₹ 27.45 on August 1, 2008 to ₹ 31.25 on August 29, 2008 and the average volume was 1,25,663 shares per day. It is also observed that during the investigation period, price volume in the scrip was as below (after adjustments for the stock split from Face Value of ₹ 2/- to ₹ 1/- from May 6, 2009) and the average volume was 2,62,382 shares per day (adjusted downwards for split). It is further observed that after the investigation period the price of the scrip (face value ₹ 1/-) fell to ₹ 13.61 on August 3, 2009 and then to ₹ 6.70 on August 31, 2009 and average volumes was 2,04,771 shares (adjusted for split) per day. It is observed that the price of the scrip of the Company as on March 19, 2010 was at ₹ 6.10.



21. It is observed on the analysis of the beneficial owner accounts of the promoters in the depository system and information obtained from the R&TA that the shareholding pattern disclosed by the Company to BSE was significantly different from the actual shareholding, particularly with respect to the promoters. In this regard, copy of the disclosure letters submitted by the Company to BSE enclosing shareholding pattern for

quarters ended June 30, 2008; September 30, 2008; December 31, 2008; March 31, 2009 and June 30, 2009 and copy of the weekly shareholding pattern of the Company from September 05, 2008 to July 31, 2009 as submitted by the R&TA was enclosed as annexures with the SCN.

22. It is observed from details submitted by R&TA that Anjuben Kothari, Brijesh Kothari and Dimple Kothari were not holding any shares during the investigation period while the disclosure made by the Company to BSE showed that Anjuben Kothari, Brijesh Kothari and Dimple Kothari were holding 1,88,000 shares, 10,37,500 shares and 2,70,500 shares respectively as on quarter ending September 2008 and December 2008.

23. The Company had submitted shareholding pattern for quarter ended June 2008 on July 25, 2008, for quarter ended September on October 29, 2008, for quarter ended December 2008 on March 2, 2009, for quarter ended March 2009 on May 13, 2009 and for quarter ended June 2009 on September 9, 2009. It is observed that in the shareholding pattern of the promoters, 'public shareholding more than 1%' and 'Public Shareholding less than 1%' there was a huge difference in the actual holding and what was disclosed by the Company. The details of actual shareholding of the Company and the shareholding disclosed by the Company is given below:

		As on 30.06.08	**As on 30.09.08**	**As on 31.12.08**	**As on 31.03.09**	**As on 30.06.09**
Promoter	**Actual**	**17094209**	**16876387**	**14471342**	**6680048**	**12871943**
		34.19	**33.75**	**28.94**	**13.93**	**13.42**
	Disclosed	2,54,38,489	2,59,62,179	2,59,62,179	2,59,62,179	51,924,358
		50.88	**51.92**	**54.12**	**54.12**	**54.12**
Public Shareholding more than 1% or more	**Actual**	**18756843**	**18586534**	**5273141**	**9300016**	**14895480**
		37.51	**37.17**	**10.55**	**19.39**	**15.53**
	Disclosed	10,50,013	19,06,021	28,48,141	47,95,514	8,149,480
		2.10%	3.81%	5.94%	10.00%	8.49
Public Shareholding less than 1%	**Actual**	**14148948**	**14537079**	**30255517**	**31989936**	**68172577**
		28.30	**29.07**	**60.51**	**66.69**	**71.06**
	Disclosed	2,35,11,498	2,21,31,800	1,91,59,680	1,72,12,307	35866162
		47.02%	**44.26%**	**39.94%**	**35.88%**	**63.61**
Total Shareholding		**5,00,00,000**	**5,00,00,000**	**5,00,00,000**	**4,79,70,000**	**9,59,40,000**

24. At this juncture, I note that vide reply dated February 08, 2011, the Noticee along with other promoters of the Company has submitted that some of the promoters had pledged the shares of the Company with Dena Bank and subsequently upon settlement of the dues of Dena Bank the shares were released and pledged to certain other entities at the request of the promoters. The Noticee has also submitted that the discrepancy in

figures between the shares disclosed and actual shares held was on account of pledged shares. The Noticee has further submitted that *"till 28 January 2009 there was no requirement to disclose pledged shares separately. With the result, there was no separate disclosure of pledged shares by the promoters up to 31st December 2008. Thereafter for the quarters ended 30th March 2009 and 30th June 2009 we have separately disclosed the pledged shares"*. The Noticee also submitted that *"The shares were pledged with Dena Bank as security for loans taken by Ashwini Trading Private Limited way back in 1999. The bank had merely held the shares as security and the shares were at no time actually transferred to the bank but held by the bank on the terms and conditions of the pledged document…….Merely because there is a failure to comply with Regulation 58 of the Depositories Participants Regulations would not have the effect of converting the pledge into a transfer. At the highest, it can be said that the pledge is irregular"*.

25. I note that the procedure for pledging of demat shares is clearly laid down within the bye-laws of the Depositories framed under the Depositories Act, 1996 and SEBI (Depositories and Participants) Regulations, 1996. In view of my observations in previous paragraphs, I don't agree with the Noticee as accepting such an argument would only mean circumventing the statutory provisions of Regulation 58 of SEBI (Depositories and Participants) Regulations, 1996. The requirement therein is that shares pledged have to be identified separately as 'pledged' shares. However, no such 'pledge' was seen identified in the demat statement of the Noticee. In this regard, I also refer to the observations made by the Securities Appellate Tribunal in Appeal No. 83 of 2010 (Liquid Holdings Pvt. Ltd. vs. SEBI, decided on 11-03-2011) – *".....The law also prescribes a mode for the creation and revocation of a pledge. The parties cannot agree to create a pledge contrary to the provisions of Regulation 58.....In the case of shares held in demat form, the Depositories Act and the Regulations framed thereunder provide the manner in which the pledge is to be created and invoked....."*.

26. From the actual shareholding of the promoters of the Company as observed form the details submitted by R&TA and the shareholding disclosed by the Company to BSE during the investigation period, it is clear that there is a gross mismatch between the actual shareholding of the promoters of the Company and the mandatory quarterly disclosures of shareholding pattern to the public through the disclosures made to BSE. For instance, it is observed from details submitted by R&TA that one of the promoters of the Company, namely, Shri Mahendra Pandey was holding 2,500 shares on December 31, 2008 and 6,200 shares as on June 30, 2009. However, from the

shareholding disclosed by the Company to BSE it is observed that Shri Mahendra Pandey was holding 5,23,690 shares for the quarter ending December 31, 2008 and 2,86,400 shares for the quarter ending June 30, 2009. Further, for the quarter ending June 30, 2009, no pledge/encumbrance is shown in the name of Shri Mahendra Pandey in the shareholding disclosed by the Company to BSE. Hence, the submission of the Noticee that the discrepancy in figures between the shares disclosed and actual shares held was on account of pledged shares is incorrect and consequently not acceptable.

27. It is observed that the Company vide their letter dated March 17, 2010 had reported to SEBI that the Noticee had pledged 1,92,99,631 shares (all dematerialised) on year ended March 31, 2009 and the disclosure for the same was made by the Company to BSE only on May 13, 2009. However, no such 'pledge' was seen identified in the demat statement of the Noticee and the demat statement of the Noticee (for account IN300020 – 10000543) showed a holding of only 62,15,445 shares as on March 31, 2009. As already observed, for dematerialised securities, no pledge gets created if Regulation 58 of SEBI (Depositories and Participants) Regulations, 1996 is not followed. Further, the Noticee in her reply dated February 08, 2011 herself has admitted that there was a failure to comply with Regulation 58 of SEBI (Depositories and Participants) Regulations, 1996. Moreover, from the SCN and submissions of the Noticee it is observed that the relevant shares were actually transferred by Dena Bank to various persons. Therefore, the shareholding patterns submitted by the Company to BSE were false and misleading and the Company and its directors were responsible for the same.

28. In view of the aforesaid, I hold that there was no pledge but transfer of shares done by the promoters. I also hold that despite the actual steep reduction in the promoter shareholding, the Company/promoters had made an attempt to mislead the shareholders and investors by making inflated and incorrect disclosures to BSE. Therefore, the disclosures made by the Company to BSE were factually incorrect and misleading the investors by indicating that the promoter was holding on to the referred large quantity of shares. The false/misleading disclosures and reporting resulted in sale/purchase of the shares of the Company based on false disclosure/information. By misreporting such price sensitive information the Company had sent misleading signals to the market as the promoters had substantially reduced their holding and the same was not reflected in the mandatory quarterly disclosures of shareholding pattern to the public through the disclosures made to BSE.

29. Regulation 3 of PFUTP Regulations prohibits a person from dealing in securities in a fraudulent, manipulative or deceptive manner either directly or indirectly. Regulation 4(1) of PFUTP Regulations prohibits a person from indulging in a fraudulent or unfair trade practice in securities and sub-regulation (2) gives some instances of fraudulent trade and unfair trade practices. Planting false or misleading news which may induce sale or purchase of securities and reporting any information which is not true are two such instances referred to in Clause (f) and (r) of Regulation 4(2) of PFUTP Regulations. As already observed, despite the actual steep reduction in the promoter shareholding, the Company made incorrect, false and inflated disclosures to BSE. I note that the Noticee, being the Managing Director of the Company, was in charge of and was responsible to the Company for the conduct of the business of the Company. Therefore, by reporting information which was not true and planting false/misleading disclosures, the Noticee acted in contravention of provisions of Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f) and 4(2)(r) of PFUTP Regulations.

ISSUE 2: Whether the Noticee has violated provisions of Regulation 13 (3) and 13 (4) read with 13 (5) of PIT Regulations and Regulation 7 (1A) read with 7 (2) of SAST Regulations?

30. Before proceeding further, it will be appropriate to refer to the provisions of Regulation 13(3), 13(4) and 13(5) of PIT Regulations and Regulation 7(1A) and 7(2) of SAST Regulations which read as follows:

SEBI (Prohibition of Insider Trading) Regulations, 2003

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

13 (3) *Continual disclosure — Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*

13 (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.*

13 (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.

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997

Acquisition of 5 per cent and more shares or voting rights of a company

7(1A): *Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.*
Explanation. – For the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

7(2): *The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of –*
(a) the receipt of intimation of allotment of shares; or
(b) the acquisition of shares or voting rights, as the case may be.

31. It is observed that the Noticee was holding 1,25,20,445 shares (25.04 % of the paid up capital of the Company) as on October 17, 2008. It is also observed that the Noticee dematerialized 1,15,00,000 shares and 4,05,000 shares into her DP ID IN300020 – 1000543. It is observed that the Noticee, as a Managing Director, traded substantially in the shares of the Company, but failed to make disclosures as required under PIT Regulations and SAST Regulations; details of which are as follows:

Alka Pandey (Promoter & Managing Director)

Date	Sold/transferred	Bought /received	% of the paid up Capital (Residual shareholding)	Violations observed SAST/PIT
21-Oct-2008	1000000	0	2.00 (23.04)	7(1A)/13(4)
04-Dec-2008	2500000	0	5.00 (18.04)	7(1A)/13(3),(4)
10-Dec-2008	4200000	0	8.40 (9.64)	7(1A)/13(3),(4)
09-Jan-2009	625000	0	1.25 (8.39)	13(4)
13-Jan-2009	0	625000	1.25 (9.64)	13(4)
14-Jan-2009	625000	0	1.25 (8.39)	13(4)
28-Jan-2009	900000	0	1.80 (6.59)	13(4)
09-Feb-2009	0	560000	1.12 (7.71)	13(4)
19-Feb-2009	500000	0	1.00 (6.71)	13(4)
24-Mar-2009	0	2500000	5.00 (11.71)	7(1A)
26-Mar-2009	25000	0	0.05 (11.06)	13(4)

32. It is observed that as per the provisions of Regulation 13(3) of PIT Regulations, the Noticee was under an obligation to disclose to the Company in Form C the number of shares or voting rights held and change in shareholding or voting rights, when there has been change in such holdings from the last disclosure made and such change exceeds 2% of total shareholding or voting rights in the Company. From the above table

it is observed that on December 04, 2008 the Noticee sold/transferred 25,00,000 shares representing 5.00% of the paid up Capital of the Company and on December 10, 2008 the Noticee sold/transferred 42,00,000 shares representing 8.40% of the paid up Capital of the Company. Hence, the Noticee ought to have made disclosures to the Company as per the provisions of Regulation 13(3) of PIT Regulations within two working days of the sale/transfer of shares which she did not. Further, the Noticee's reply dated February 08, 2011 does not contain any submissions relating to the issue of not making disclosures under Regulation 13(3) of PIT Regulations. Hence, I note that the Noticee failed to make the required disclosures under Regulation 13(3) of PIT Regulations to the Company and therefore, has violated the provisions of Regulation 13(3) of PIT Regulations.

33. It is observed that the provisions of Regulation 13(4) read with 13(5) of 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 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower; and such disclosure has to be made within two working days of acquisition or sale of shares or voting rights, as the case may be. From the above table it is observed that on 10 (ten) occassions during the investigation period, the Noticee had sold/transferred and also bought/received more than 25,000 shares of the Company. Hence, the Noticee being the Managing Director of the Company, was under obligation to make disclosures under Regulation 13(4) of PIT Regulations to the Company and to the Stock Exchange every time there was change in shareholding of more than 25,000 shares and such disclosures had to be made within two working days of acquisition or sale of shares. However, no such disclosures had been made by the Noticee under the aforesaid regulation. Further, the Noticee's reply dated February 08, 2011 does not contain any submissions relating to the issue of not making disclosures under Regulation 13(4) of PIT Regulations. Hence, I note that the Noticee failed to make the required disclosures under Regulation 13(4) of PIT Regulations to the Company and to the Stock Exchange and therefore, has violated the provisions of Regulation 13(4) read with 13(5) of PIT Regulations.

34. It is observed that provisions of Regulation 7(1A) of SAST Regulations is quiet clear in its import and makes it obligatory to disclose purchase or sale aggregating two per cent or more of the share capital of the company to the company and the Stock Exchange. It

is observed that on October 21, 2008 the Noticee had sold/transferred 10,00,000 shares comprising 2.00% of the paid up Capital of the Company; on December 04, 2008 the Noticee sold/transferred 25,00,000 shares comprising 5.00% of the paid up Capital of the Company; on December 10, 2008 the Noticee sold/transferred 42,00,000 shares comprising 8.40% of the paid up Capital of the Company and on March 24, 2009 the Noticee bought/received 25,00,000 shares comprising 5.00% of the paid up Capital of the Company. Therefore, the Noticee was under obligation to make disclosures under Regulation 7(1A) of SAST Regulations to the Company and to the Stock Exchange. However, no disclosure had been made by the Noticee under the aforesaid regulation. Further, the Noticee's reply dated February 08, 2011 does not contain any submissions relating to the issue of not making disclosure under Regulation 7(1A) of SAST Regulations. Hence, I note that the Noticee failed to make the required disclosures under Regulation 7(1A) of SAST Regulations to the Company and to the Stock Exchange and therefore, has violated the provisions of Regulation 7(1A) read with 7(2) of SAST Regulations.

ISSUE 3: Whether the Noticee is liable for monetary penalty under Section 15HA and Section 15A(b) of the SEBI Act, 1992?

35. The provisions of Section 15 HA and Section 15A(b) of SEBI Act, 1992 reads,

Penalty for fraudulent and unfair trade practices:

Section 15HA: *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Penalty for failure to furnish information, return, etc.:

Section 15A (b): *If any person, who is required under this Act or any rules or regulations made thereunder 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.*

36. As already observed, the disclosures made by the Company to BSE during the investigation period were factually incorrect and misleading the investors by indicating that the promoter was holding on to the referred large quantity of shares and hence, by reporting information which was not true and planting false/misleading disclosures, the Managing Director of the Company, i.e., the Noticee acted in contravention of provisions of Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f) and 4(2)(r) of PFUTP

Regulations. Therefore, the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act, 1992.

37. It is also observed that the Noticee, as a Managing Director, dealt substantially in the shares of the Company, but failed to make disclosures as required under Regulation 13 (3) and 13 (4) read with 13 (5) of PIT Regulations and Regulation 7 (1A) read with 7 (2) of SAST Regulations. Therefore, I find that the Noticee is also liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

ISSUE 4: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

38. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992, 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."*

39. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. Even though the monetary loss to the investors cannot be computed, any indulgence into fraudulent and unfair trade practices by anyone always erodes investor confidence in the securities market. Persons who indulge in unfair trade practices in securities market should be suitably penalized for the said acts of omissions and commissions. By virtue of making wrongful and misleading disclosures to the BSE and the failure to make necessary disclosures under PIT Regulations and SAST Regulations, the fact remains that the investors were deprived of the correct information at the relevant point of time. In other words, by not complying with the regulatory obligation of making correct and timely disclosures, she had concealed vital information which is detrimental to the interest of investors in securities market. Further, I note that the Noticee has failed to make required disclosure under Regulation 13(3) of PIT Regulations on two occassions, disclosure under Regulation 13(4) of PIT Regulations on ten occassions and disclosure under Regulation 7(1A) of SAST Regulations on four occassions, and therefore the default by the Noticee is of repetitive nature.

40. In the forgoing paragraphs it is now established that the Noticee indulged in false/misleading disclosures and reporting leading to violation of provisions of Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f) and 4(2)(r) of PFUTP Regulations. It is also established that the Noticee failed to make necessary disclosures as required under Regulation 13 (3) and 13 (4) read with 13 (5) of PIT Regulations and Regulation 7 (1A) read with 7 (2) of SAST Regulations. Considering the facts and circumstances of the case and the violation committed by the Noticee, I find that imposing a penalty of ₹ 10,00,000/- (Rupees Ten Lakhs only) on the Noticee under Section 15HA of SEBI Act, 1992 and a penalty of ₹ 15,00,000/- (Rupees Fifteen Lakhs only) on the Noticee under Section 15A(b) of SEBI Act, 1992 would be commensurate with the violations committed by the Noticee.

ORDER

41. Considering the facts and circumstances of the case, in terms of Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 10,00,000/- (Rupees Ten Lakhs only) under Section 15HA of SEBI Act, 1992 and a penalty of ₹ 15,00,000/- (Rupees Fifteen Lakhs only) under Section 15A(b) of SEBI Act, 1992 {i.e. total penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakhs Only)} on Smt. Alka M Pandey.

42. The penalty shall be paid by way of demand draft drawn 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 Shri Biswajit Choudhury, Deputy General Manager, Investigation Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

43. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

Date: June 28, 2011 **P. K. Bindlish**
Place: Mumbai **Adjudicating Officer**