

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD/BJD/NJMR/2/2017-18**

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 Alka India Ltd.,
[PAN: AABCA6702F]
102, 1st Floor, Morya Landmark II
Off New Link Road, Andheri (West)
Mumbai – 400053.**

**Old address
Registered Office, E-211
Crystal Plaza, New Link Road
Andheri (W), Opp: Fameadlabs
Mumbai – 400053.**

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') came out with a Circular vide ref., no., CIR/OIAE/1/2014 dated December 18, 2014 (hereinafter referred to as 'Circular'), consolidating the earlier Circulars issued by SEBI vide ref., nos., 1) CIR/OIAE/2/2011 dated June 3, 2011 2) CIR/OIAE/1/2012 dated August 13, 2012 and 3) CIR/OIAE/1/2013 dated April 17, 2013 with regard to redressal of investor grievances through SEBI Complaints Redress System (**SCORES**) platform. In terms of the Circular dated December 18, 2014, all listed companies are required to take immediate efforts on receipt of a complaint, for its resolution within thirty days, keep the complainant duly informed of the action taken thereon and update the Action Take Reports (ATRs) along with supporting document, if any, electronically in SCORES. Failure by listed companies to file ATR under SCORES within 30 days of receipt of the grievance shall not only be treated as failure to furnish information to SEBI but shall also be deemed to constitute non-redressal of investor grievance.

2. It was observed that two (2) complaints were pending against M/s Alka India

Ltd., (hereinafter referred to as “**Noticee / the Company**”) and it was alleged that the Noticee failed to furnish information to SEBI by not filing ATR under SCORES and thereby not redressed the investor grievances.

3. It was therefore alleged that the Noticee failed to comply with the provisions of SEBI Circular dated December 18, 2014 and thus liable for penalty under Sections 15 A (a) and 15C of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri Prasad Jagdale was appointed as the Adjudicating Officer vide internal noting dated February 27, 2015 under Section 19 of the SEBI Act, 1992 read with Section 15-I (1) of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) to inquire and adjudge under Sections 15 A (a) and 15C of the SEBI Act, 1992, for the alleged violations committed by the Noticee. Pursuant to the transfer of Shri Prasad Jagdale, Shri S. V. Krishna Mohan, was appointed as the Adjudicating Officer vide Order dated December 14, 2016. Further, Vide Order dated May 18, 2017 the undersigned was appointed as Adjudicating officer to adjudge the said matter.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice (hereinafter referred to as “SCN”) bearing ref. no. EAD/PJ/JAK/18137/2016 dated June 28, 2016 was issued to the Noticee under Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under sections 15 A (a) and 15C of SEBI Act, 1992 for the violations alleged to have been committed by the Noticee. The said SCN was delivered to the Noticee.
6. The Noticee vide its letter dated July 12, 2016 submitted its reply to the SCN. The following are their main submissions:

- a) *The complaint has been drafted in a very vague and confusing manner making it difficult to understand the grievance of the said complainant.*
- b) *The said complainant was the shareholder of Janice textile Ltd., and the complaint was related to undue demand of money for the investment which complainant has done through the stock broker or otherwise on the basis of market evaluation. Hence the complaint is mis-directed to us.*
- c) *Be that as it may, the said complaint was explaining the profit which might be earned by the said complainant; however we are unable to understand how this profit calculation has been made.*
- d) *Further the said complaint is related to the non-receipt of the shares in exchange of Scheme of Amalgamation of the Company which is beyond the control of the Company as the said Scheme of Amalgamation has been stuck with the Listing Department of Bombay Stock Exchange Ltd.,*
- e) *Incidentally we state that the said complaint forwarded by SEBI in which letter dated 08/20/0509 (unable to read this date) the complaint category was 05 A which is related to the Non Receipt of Annual Report and unit mentioned is Janice Textiles Limited – copy is annexed hereto.*
- f) *The complaint has already been resolved as can be seen from ATR enclosed thereto.*
- g) *Request to condone the delay in filing the ATR as the Company was not in default due to above stated reasons and neither had it had any mala-fide intentions to deceive the investors.*
- h) *As on date, there are no pending complaint against the Company as can be seen from the SCORES platform, copy of the same is attached herewith.*
- i) *The said complaint was so vague and confused that Company was unable to understand the grievance of the said complaint and Company was unable to reply to complaint on time. In the aforesaid circumstances which were beyond the control of the Company the said complaint was un-replied for some time however after that company has replied the same after understanding the grievance of the complainant.*

7. In the interest of natural justice and in terms of Rule 4 (3) of the Adjudication Rules, vide notice dated June 6, 2017, the Noticee was granted an opportunity

of personal hearing on June 14, 2017. The Noticee vide letter dated June 13, 2017 submitted an authorization letter duly authorizing Shri Prakash Shah, Advocate, M/s Prakash Shah & Associates (henceforth referred to as "Authorized Representative"/ "AR") to appear on their behalf, before me, which is taken on record. The AR reiterated the submissions made by the Noticee vide letter dated July 12, 2016. During the hearing, AR submitted copies of three recent Orders (AO/SG-VP/EAD/34/2017, NP/JR/37/2017 and AO/SG-VP/EAD/37/2017) passed by Learned A.Os of SEBI where the facts are similar to the present proceedings. It was submitted that these Order may be considered in the instant proceedings. Further, the AR also submitted that following mitigating factors may also be considered.

- a) The complaints have been resolved before the issue of SCN.
- b) There are no complaints pending as on date of oral submissions.

8. The AR was directed to submit the present status of amalgamation / merger of Janice Textiles Ltd., (JTL) with the Noticee along with the documentary proof and also the details of disclosures made to Stock Exchanges, if any, in this regard, by June 15, 2017.

9. Vide letter dated June 15, 2017 the Noticee made the following additional submission pursuant to the personal hearing held on June 14, 2017.

- a) *The Scheme of Amalgamation of Janice Textiles Ltd., with Alka India Ltd., (Our Company / We") was duly approved by the Board of Directors of both Transferor Company and Transferee Company at their respective meetings held on 26.03.2004.*
- b) *In accordance with the procedure laid down under the Companies Court Rules the meeting of the shareholders and creditors of both the companies were held on 04.01.2005 and 10.01.2005. The Scheme was approved by the shareholders and the creditors. Thereafter, the notice of petition was published on 16.07.2005 in the Indian Express inviting objections against the scheme but no objection was received. The Central Government was*

also given notice under section 394A of the Companies Act, 1956 and even the Central Government allowed the scheme to sanction.

- c) Ultimately, the Scheme of Amalgamation has been sanctioned by the High Court of Ahmedabad on 16.11.2005 and High Court of Bombay on 26.08.2005, copies of the Order of both the High Courts have been submitted to the Stock Exchange. Further, copies of the order of the High Courts have duly been filed with the respective Registrars as required.*
- d) In terms of the clause 11 of Scheme of Amalgamation, our Company (Transferee Company) was directed to issue and allot the shares to the shareholders of Janice Textiles Ltd., (Transferor Company) whose names are recorded on the Register of Members of the Transferor Company on a date to be fixed by the Board of Directors of Transferee Company.*
- e) Accordingly, the Board of Directors of our Company at their meeting held on 24.02.2006 decided 16.03.2006 as the Record Date for the purpose of issue and allotment of shares to the eligible shareholders of the Transferor Company and approached the stock exchange to approve the record date on 16.03.2006.*
- f) However, BSE has not granted permission for the record date without which our company cannot issue and allot shares. Company has followed up with BSE but did not get permission for record date.*
- g) This matter also goes with the Listing Committee and they advised the company representatives to keep the matter in abeyance until the company got No-objection / Relaxation from Securities and Exchange Board of India (SEBI) for preferential issue and thereafter, get is Preferential Issue listed on the Exchange. Only after the aforesaid, BSE will give permission for record date for issue and allotment of the shares of Amalgamation.*
- h) The Company has already exchanged various correspondences, however the matter is still kept in abeyance by BSE.*
- i) As per the above mentioned facts and circumstances, we would like to*

inform your kind self that as the matter of record date for issue and allotment of shares and Listing of the same is kept in abeyance by BSE, due to which no shares were issued allotted pursuant to or in relation to the scheme of merger / amalgamation as per the given ratio or proportion mentioned in your complaint regarding non transfer of shares.

- j) Kindly note that company has not issued and allotted shares to any of the shareholders of the transferor company as the matter is kept in abeyance by BSE. Company is cautiously following up the matter pending before BSE and once it is approved company will issue and allot shares.*

In addition to the above, further information regarding various correspondences made with Stock Exchanges with regard to Scheme of Amalgamation has been called from the Noticee vide emails dated June 19 and 21, 2017. Noticee had submitted the information sought by me vide its email dated June 20 and 23, 2017 enclosing all the correspondences made with the Stock Exchange (BSE) along with chronology of event in tabular form, relevant contents of which are dealt in the subsequent paras.

CONSIDERATION OF ISSUES

10. The issues that arise for consideration are as under:

- (a) Whether the Noticee has failed to furnish information to SEBI by not filing ATR under SCORES and thereby not redressed the investor grievances, thus failed to comply with the provisions of SEBI Circular dated December 18, 2014?
- (b) Does the violation, if any, attract monetary penalty under Sections 15 A (a) and 15C 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?

FINDINGS

11. I have carefully perused the written & oral submissions of the Noticee, submissions made by BSE and the documents available on record. It is observed that the allegation against the Noticee is that it had failed to furnish information to SEBI by not filing ATR under SCORES and thereby not redressed the investor grievances within the specified time, as per SEBI Circular dated December 18, 2014.

ISSUE -1: *Whether the Noticee has failed to furnish information to SEBI by not filing ATR under SCORES and thereby not redressed the investor grievances, thus failed to comply with the provisions of SEBI Circular dated December 18, 2014?*

12. Before, I go into the merits of the case, various submissions made by the Noticee shall be dealt first.

13. ***The Noticee submitted that the complaint was vague and confused. Therefore, it took time to understand the complaint and reply to the complaints accordingly.***

In this regard, I note from the submissions made by the Noticee that they have not taken any steps to ascertain the contents of the complaints, especially when the complaint is vague and difficult to understand. However, it is clear that the Noticee had understood the contents of the complaints on its own, after a period of more one year and eight months. Further, the category of complaints mentioned in the SCORES at the time of forwarding the complaint was “NON RECEIPT OF SHARES AFTER TRANSFER”. Therefore, it is hard to comprehend that it took one year and eight months just to understand the essence of complaint, without making any efforts to ascertain from the complainant.

14. ***The Noticee has submitted that the complainant was the shareholder of Janice Textiles Ltd., and therefore misdirected to them.***

From the submissions made by the notice that “In terms of the clause 11 of

Scheme of Amalgamation, our Company (Transferee Company) was directed to issue and allot the shares to the shareholders of Janice Textiles Ltd., (Transferor Company) whose names are recorded on the Register of Members of the Transferor Company on a date to be fixed by the Board of Directors of Transferee Company". Although the complainant is not a shareholder of Alka India, it is implicit from the above directions that complainants are entitled to receive shares of the Noticee, pursuant to amalgamation of JTL with the Noticee. Therefore, any complaint in this regard will be relevant to the Noticee and cannot be considered as mis-directed.

15. *The Noticee submitted that the complaint was related to non-receipt of annual report in respect of Janice Textiles Ltd.,*

I note from the records that the letter being referred by the Notice that, it was not addressed directly to them. With regard to complaint regarding non-receipt of annual report, SEBI had earlier sent a letter to the complainants advising them to take up the matter with Ministry of Corporate Affairs. The copy of said letter was attached by the complainants while lodging a complaint with SEBI. I note from above that the complaint of non-receipt of annual report does not arise in this case, as the same neither pertains to the Noticee nor separately mentioned in the SCORES.

16. *During personal hearing before me, the Adjudication Orders of learned AOs of SEBI with similar cases have been submitted by the AR. I have perused the same and following are my observations.*

Adjudication Order & Date	Issues raised / relied upon by the Noticee	My observations
AO/SG-VP/EAD/34/2017 dated April 28, 2017	The Noticee had resolved the complaint one year prior to the issuance of SCN and thereby the Adjudication proceedings initiated against the Noticee were disposed of.	As per the circular dated SEBI December 18, 2014, all listed companies are required to take efforts for resolution of complaints within 30 days. It is noted

		<p>that in the current proceedings the Noticee failed to take steps within the stipulated time.</p> <p>As on date of initiation of the Adjudication proceedings, Noticee neither made any efforts nor resolved the complaints within the stipulated time. SCN is only mode of communicating charges and violations for the period when the default occurred.</p> <p>Thus the facts, circumstance and mitigating factors differ from the AO Order relied upon by the Noticee.</p>
NP/JR/37/2017 dated May 18, 2017	As the Noticee had taken reasonable steps to resolve the complaint, Adjudication proceedings against the Noticee were disposed of.	In the instant case, the Noticee had not taken any efforts to resolve the matter as mandated and took one year and eight months to redress the complaint.
AO/SG- VP/EAD/37/2017 dated May 30, 2017	As the Circular referred to in the proceedings was issued in exercise of powers conferred under Section 11 (1) of the SEBI Act, 1992 and hence does not fall within the contours of Section 15 A (a) of SEBI Act.	As regards the alleged violation of SEBI circular dated December 18, 2014, which is liable for monetary penalty under Section 15 A (a) is dealt separately in this Order.

FACTS ON RECORD

17. It is observed from the details of complaints available on record that Mr Jayantilal M Jain and Ms. Vimala Jain (herein referred to as complainants) filed two complaints through SCORES against the Noticee on February 18, 2014 bearing complaint registration numbers SEBIP/MH14/0000977/1 and SEBIP/MH14/0000978/1. These complaints were forwarded to Noticee through

SCORES on February 25, 2014 for redressal. .

18. In the SCORES, as per the contents of the complaints, the nature of complaint was registered as *“Non-receipt of securities after transfer”*. The complainants were shareholders of “Janice Textiles Ltd.” (JTL), who have lodged their complaints with SEBI on SCORES against Noticee as they did not receive shares of the Noticee, pursuant to scheme of amalgamation of JTL with the Noticee.

19. The extracts of relevant contents of the complaints are reproduced hereunder:

“We are consult to Janice Textiles and Alka India Ltd., they are give to us reply shortly you are get the company share Alka India Shares. But till dated 23-06-2008 we are not received merger wise Alka India shares in our Depository.”

20. As there was no reply from the Notice regarding the redressal of complaints, SEBI through SCORES had issued the following directions to the Noticee on October 28, 2014:

“You are advised to resolve the compliant and file final ATR at the earliest and not later than 15 days, failing which appropriate regulatory action under provisions of SEBI Act, 1992 shall be initiated against you.”

21. As there was no reply from the Noticee regarding the redressal of complaints, SEBI through SCORES on March 2, 2015 recorded that *“the regulatory action initiated against the Noticee for not filing ATR and non-redressal of investor grievance by the company “*

22. I note that the Noticee had replied to the complainants on October 28-29, 2015, after a lapse of one year and eight months from the date of receipt of complaints by SEBI. The submissions made by the Noticee on SCORES are as under

“It is being informed to the shareholder that as the scheme of merger has not been affected as the company has not yet received the NOC or

relaxation from SEBI for preferential issue and the company is still in the process of listing the said preferential issue on the exchange and due to which no shares were transferred or issued pursuant to scheme of merger or amalgamation as per the given ratio of proportion mentioned in shareholders complaint regarding non transfer to shares”.

23. Based on the reply submitted by the Noticee, the complaints were treated as disposed of on November 19, 2015.

24. The above facts are not disputed by the Noticee.

SUBMISSIONS MADE BY NOTICEE AND FINDINGS

25. One of the main submissions of the Noticee is that “BSE had kept their application for approval for record date for issue and allotment of shares and listing of same, in abeyance, until No Objection / Relaxation from Securities and Exchange Board of India (SEBI) for preferential issue and thereafter, get its preferential issue listed on the exchange. Therefore, in the absence of BSE granting permission for the record date without which the Noticee cannot issue and allot shares. Company has followed up with BSE but did not get permission for record date”.

The second submission is that complaints have been resolved before the issue of SCN.

26. In Order to deal with above submissions, I proceed to examine the above facts and running through the following two parameters to arrive at a conclusion on my findings.

- I. Whether the Noticee could have taken steps to resolve the complaints within reasonable time period from the date of receipt of complaint and whether were there any constraints beyond its control which resulted in non-redressal of complaints.**
- II. The impact of action / inaction by the Noticee on the complainants**

and investors at large.

27. Before I proceed further, I wish to state that matter before me pertains to non-redressal of investor complaints, which is non-receipt of shares of Alka India Ltd., by the complainant pursuant to amalgamation of JTL with the Noticee. However, in order to ascertain whether Noticee could have resolved the complaints and whether matters were beyond its control, I have called for all correspondences made in this regard, which I consider is material and relevant to come to a conclusion in this matter. Accordingly, all the correspondences exchanges between the Noticee and BSE are taken on record.

28. In order to examine the first parameter, pursuant to hearing, the Noticee was advised to submit copies of all correspondence exchanged by them with stock exchanges, regarding scheme of amalgamation of JTL with Noticee which were submitted on June 20, 2017. The chronological events are submitted by the Noticee are taken on record.

29. In order to verify the claim of the Noticee, in exercise of powers under section 15 I (2) of SEBI ACT, 1992, information regarding various correspondences made with / from the Noticee regarding permission for record date for issue and allotment of the shares of Amalgamation along with information regarding number of shareholders, which I consider, relevant for the proceeding have been called from BSE vide email dated June 21, 2017.

30. The following submissions made by BSE are taken on record.

- a) The company had not approached the Exchange regarding the fixing of Record Date and / Book Closure regarding the amalgamation of Janice Textiles Ltd with Alka India Ltd. Hence, the Exchange is unable to provide the corporate action date.
- b) The Exchange in its notice no: 20150827-30 dated August 27, 2015 issued that Janice Textiles Ltd would be delisted on September 02, 2015 as the company had amalgamated with Alka India Ltd in 2011.

- c) In case of Alka India Ltd, there were 35,048 shareholders as per the Shareholding pattern submitted for the quarter ended December 31, 2014 and 34,861 number of shareholders for the quarter ended March 31, 2017.
- d) As per the quarter ended December the number of shareholders for Janice Textiles Ltd were 430.

31. In accordance with the principles of natural justice, vide an email dated June 21, 2017 an opportunity was provided to the Noticee to furnish their comments, if any to the submissions made by BSE. Noticee, vide their email dated June 23, 2017, attached copy of their letter dated June 23, 2017. In reply, the Noticee denied the submission of BSE at Point 30 (a) above and while reiterating their earlier submissions made on June 20, 2017, have only submitted copy of a Legal Notice dated August 9, 2006 addressed to BSE advising them to expedite approval of record date. In this connection, the Noticee also submitted BSE's letter dated August 11, 2006.

32. From the documents submitted by Noticee, I note that latest correspondence made by the Noticee with BSE was on September 23, 2008, which is after a lapse of two years from its earlier correspondence of August 9, 2006. The contents of letter dated September 23, 2008 are perused and the following are noted.

- a) At para 2 of 2nd page of letter under reference, it was stated that "The company has already exchanged various correspondence with SEBI to obtain No objection / Relaxation with regard to direction of Bombay Stock Exchange and they granted the same and informed the exchange directly." However, in its reply to the complaint on October 28-29, 2016, which is on record, Noticee mentioned that "*NoC or relaxation from SEBI for preferential issue has not been received*".
- b) At para 5 of 2nd page of letter under reference, it was stated that "We are regularly getting inquiries from shareholders of Janice Textiles Ltd for the exchange of shares". Now there is lot of pressure from investors of Transferor Company (Janice Textiles Ltd) enquiring about the allotment

of shares pursuant to the aforesaid scheme of Amalgamation.”

- c) BSE inter alia informed the Noticee that *“the listing committee advised the company representatives to keep the matter in abeyance until the company got No-objection / Relaxation from SEBI for preferential issue and thereafter, get its preferential issue listed on the Exchange”*.

OBSERVATIONS

33. Having perused the submissions made by BSE and the reply provided by the Notice therein, the following are my observations.

- a) It is clear from above that Noticee was fully aware that shareholders of Janice Textiles are affected and following up. Despite the same, there was no attempt on the part of the Noticee to follow up with BSE after September 23, 2008. Further, the sense of urgency demonstrated above could not be observed while dealing with the complaints forwarded by SEBI.
- b) I note that although there is nothing on record to suggest SEBI has granted No Objection / Relaxation to the Noticee. The Noticee made wrong, misleading and contradictory statements in its letter addressed to BSE that its application was kept in abeyance. Whereas due to non-compliance of regulatory requirements, the issue and allotment of shares of the Noticee pursuant to amalgamation of JTL by the Noticee, the matter was kept in abeyance.
- c) I note that the Noticee replied to the complainants after one year eight months by updating on the status of amalgamation and allotment of shares. However, I note that there were no steps taken by Noticee to resolve the complaints by following up with BSE or clarifying to all the shareholders of Janice Textiles Ltd.,
- d) Based on the recommendations of Listing Committee, wherein the representatives of the Noticee was present in the meeting held on October

6, 2005, I note that BSE has laid down a pre-condition to keep the application of the Noticee under Clause 24 (f) for the proposed scheme of amalgamation of JTL, till Noticee got no objection / relaxation from SEBI.

34. Further, it is observed from the contents of the letter dated August 11, 2006 addressed by BSE to the Noticee, wherein BSE inter-alia has stated as under:

“The Exchange vide its letter dated June 2, 2004, in view of the investigation being carried out, had intimated to the company to keep the matter in abeyance until the Exchange conveys its No objection to the scheme of amalgamation. However, it is noted that inspite of the Exchange advise as above, the Company proceeded in the matter and obtained the Orders from Hon’ble High Courts of Bombay & Ahmedabad Orders dated August 26, 2005 and November 16, 2005 respectively sanctioning the scheme of amalgamation”.

35. After taking into considerations the submissions of BSE & the Noticee, I am of the view that the contention of the Notice that “redressal of complaints of non-receipt of shares in exchange of scheme of amalgamation of JTL was beyond the control of the company” is not acceptable, as the Noticee failed to meet the various Regulatory compliances laid down by BSE. I am of the view that failure to meet regulatory requirements cannot be considered as factors or circumstances beyond the control of Noticee. I also note that there is no follow up with the BSE to ensure compliance of Regulatory requirements as prescribed by BSE.

36. From the records, I note that Board of Directors of both the companies have approved the Scheme of amalgamation, whereas there is no documents available on records to suggest that various concerns arising at the time of implementation of the Scheme and allotment of shares have been discussed in any of its Board meetings for last 12 years, in the interest of investors.

37. Thus, I conclude that the Noticee has not taken steps to resolve the complaints and there were no constraints beyond its control which resulted in non-redressal of complaints.

II - The impact of action / inaction by Noticee on the complainants and investors at large

38. In order to examine the second parameter in terms of impact on complaints due to inaction of the Noticee, the following are my observations.

- (a) I note that there are only two complaints on record as per SCORES against the Noticee, whose complaint was non-receipt of shares pursuant to amalgamation of JTL with the Noticee. As per the own submission of the Noticee, none of the shareholders of JTL have received any shares of the Noticee.
- (b) It is relevant to note that the matter of amalgamation has been recognized as deemed price sensitive information as per SEBI (Prohibition of Insider Trading) Regulations. In matters of such sensitive nature, listed companies should keep investors informed within reasonable time so as to enable them take an informed decision.
- (c) I note that Janice Textiles Ltd was delisted on September 20, 2015. As per the information available on record, there are 430 shareholders holding 53,75,900 shares. As per the scheme of Amalgamation, the Noticee is required to issue and allot the shares to the shareholders of JTL in the proportion of 1:25. Thus total number of shares of JTL which is 53,75,900 would become 13,43,97,500 shares. Thus, 430 shareholders would have got 13,43,97,500 shares of Alka India Ltd had the allotment taken place. In the absence of same, shareholders of JTL have been deprived of such allotment, which resulted in opportunity loss.
- (d) It is noted that the status of amalgamation was sent to the complainants through SCORES after one year eight months on October 28-29, 2015 from the date of receipt of complaints. It cannot be considered as redressal of complaint but merely an information which facilitates to take informed decision.
- (e) Besides, there was no attempt made by the Noticee to inform all the shareholders of the Janice Textiles Ltd and Alka India Ltd., In the absence of same, I conclude after examining all the correspondence made by the

Noticee with BSE, in light of various facts and findings mentioned above, the Noticee did not take any steps to redress the grievance of complainant and thus denied an opportunity to the complainants and all investors of Janice Textiles Ltd., to take informed decision as regards their holding of shares.

- (f) Incidentally, it is observed from BSE website that Janice Textiles Ltd has been delisted on September 2, 2015. Further, I also note that apart from the complainants, there are 430 investors of Janice Textiles Ltd who also have not received amalgamated shares till date, as admitted by the Noticee. Since Janice Textiles Ltd., has been delisted, there is no recourse available for the shareholders to sell its shares on the stock exchange platform as on today.
- (g) Thus the interest of investors of Janice Textiles as well as the Noticee are gravely affected due to non-allotment of shares pursuant to scheme of amalgamation. Many investors would have dealt, during the relevant period, in the shares of Janice Textiles Ltd and Noticee on the basis of the information of Scheme of Amalgamation which is deemed to be a price sensitive information as per SEBI PIT regulations.

39. I conclude that the Noticee had failed to redress the complaints within the stipulated time, thereby not complying with the provisions of SEBI circular dated December 18, 2014, which renders liable for monetary penalty under Section 15C of SEBI Act.

ISSUE – 2 - Does the violation, if any, attract monetary penalty under Sections 15 A (a) and 15C of SEBI Act.?

Section 15 C of SEBI Act

40. The provisions of Section 15 C of the SEBI Act, 1992 read as under:

“If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of

investors, fails to redress such grievances within the time specified by the Board, such company or intermediary 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”.

From the above reading of Section 15 C, I note that key ingredient required are

- a) Should be a listed company.
- b) After having called upon by Board in writing to redress the grievance of investors.
- c) Fails to redress investor grievance within the time specified by Board.

41. Based facts mentioned above, I note that all three ingredient are present in this case. Noticee was a listed company at the time when complaint was lodged in SCORES. It is was clearly mentioned in the SCORES that complaint should be redressed within 15 days from the date of receipt of complaint failing which regulatory action would be initiated under SEBI Act, 1992. I note that in the digital age, electronic communication can be considered equal to calling in writing. Further, SEBI circular dated December 18, 2014 has also stated that reasonable steps should be taken to redress the grievance within 30 days from the date of receipt. From the above findings and appreciation of evidences produced before me, I am of the view that the Noticee has not taken any steps to redress investor grievance till one year eight months which is not considered reasonable time by any yardstick. I note that the Noticee had only intimated the status of the scheme of amalgamation but the original complaint of non-receipt of amalgamated shares of Noticee still remains.

42. The submission of the Noticee that since amalgamation has not taken place till date, there is no question of issuing shares to complainants. In this regard, Noticee submitted AO order passed by Learned AO of SEBI. In this regard, I rely on the SAT Order dated August 24, 2016 in the matter of MFL India Ltd., Vs SEBI, wherein SAT had seen no merit in the contention of the appellant that *“Since the appellant company had not declared any dividend during the relevant years, the question of the investor’s not receiving the dividend did not arise at*

all”. SAT ruled that “Section 15C of the SEBI Act provides that if any listed company fails to comply with the directions issued by the Board within the stipulated time and fails to redress the investor grievances within the time specified by the Board, then such company shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees”.

43. Thus, I hold the Noticee liable for levy of monetary penalty under Section 15C of SEBI Act.

Section 15A(a) of SEBI Act, 1992

44. As per the provisions of SEBI circular dated December 18, 2014, all listed companies are required to take immediate efforts on receipt of a complaint, for its resolution within thirty days, keep the complainant duly informed of the action taken thereon and update the Action Take Reports (ATRs) along with supporting document, if any, electronically in SCORES.

45. In the instant case, pursuant to forwarding the complaints to the Noticee on February 25, 2014, the Noticee furnished ATR on October 29 & 30 2015, which is after a delay of one year and eight months.

46. Thus, I find that the Noticee failed to file ATR within the stipulated period of 30 days of receipt of grievance, thereby violated the provisions of SEBI circular dated December 18, 2014. It was alleged in the SCN that by not filing ATR as per the aforesaid circular, the Noticee was liable for monetary penalty under Section 15 A (a).

The provisions of Section 15 A (a) of the SEBI Act, 1992 read as under:

Penalty for failure to furnish information, return etc.,

15 (A) If any person, who is required under this Act or any rules or regulations

made thereunder:

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

I note that as per the above provisions, contravention of Act, or any rules or regulations made thereunder is required and there is no scope for wider interpretation to include the directions issued through circulars. I note that for the monetary penalty, there should be strict interpretation of law.

However, I note that Securities Appellant Tribunal (SAT) in the matter of *M/s Vidarha Industries Ltd., Vs Securities and Exchange Board of India* decided on 01.12.2014 observed as follows:

“.....since the appellant being a listed company, failure on part of the appellant to comply with the SEBI circular dated April 17, 2013 constitutes violation of SEBI circular for which penalty imposable under Section 15HB of SEBI Act”.

In view of the above, although the Noticee failed to submit the ATR and holds guilty of violation of SEBI Circular, the Noticee cannot be charged under Section 15 A (a) as mentioned above. Therefore, based on above facts, I do not hold them guilty of violation of Section 15 A (a) of SEBI Act, 1992.

However, SEBI may initiate separate proceedings against the Noticee in this regard under Section 15HB of SEBI Act.

ISSUE – 3 - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

47. I note that the subject matter of Amalgamation / merger has been defined as deemed to be price sensitive information (PSI) as per SEBI (Prohibition of Insider Trading) Regulations, 1992. I note that the manner in which the Noticee

had dealt with respect to Scheme of Amalgamation of Janice Textiles Ltd., which is detrimental to the interest of the investors of (a) JTL in particular and (b) the Noticee in general. Further, no efforts were made to inform all investors of Janice Textiles Ltd., and Alka India Ltd., does not inspire confidence among investors and demonstrate genuine intentions of the Noticee especially when the subject matter is deemed to be price sensitive information.

48. While determining the quantum of monetary penalty under Section 15 C of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

- (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.*

ORDER

49. I take into consideration the factor *“the amount of loss caused to an investor or group of investors as a result of default”*, in view of non-redressal of complaint, which is non-receipt of shares pursuant to amalgamation of JTL with the Noticee. As per the provisions of Section 15C of SEBI Act, a *penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less can be levied*. Considering that there are only two complaints pending against the Noticee, the following factors have been taken into consideration for levy of penalty.

- a) The complaints were not redressed by the Noticee;
- b) There was a delay of one year and eight months in informing the status of amalgamation to the complainants.
- c) Non-compliance of regulatory requirements as laid down by BSE for the proposed amalgamation.
- d) The transferor company (JTL) has since been delisted pursuant to its amalgamation with the Noticee, the shareholders of JTL have been deprived

of opportunity loss.

50. The loss caused to an investor / group of investors cannot be directly quantified and also taking into consideration of all the facts and circumstances, I impose a penalty of ₹ 25,00,000/- (Rupees Twenty Five Lacs only) under the provisions of Section 15C of SEBI Act for non-redressal of complaints. The said penalty imposed on the Noticee, as mentioned above, shall commensurate with the violation committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

51. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable to Government of India
Beneficiary A/c No	31465271959

52. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Deputy General Manager, Enforcement Department, SEBI. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	

Bank Details in which payment is made	
Payment is made for (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)	

53. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: June 27, 2017

B J DILIP

Place: Mumbai

General Manager & Adjudicating Officer