

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. JJ/AM/AO-35/2014

**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:

**Ms. Urvashi Ashok Kadakia
(PAN - AAOPK9987C)**

In the matter of:

Ashok Alco-Chem Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") carried out an examination in the scrip of Ashok Alco-Chem Limited (hereinafter referred to as "**Company**"). The shares of the Company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**"). It was observed that Ms. Urvashi Ashok Kadakia (hereinafter referred to as "**Noticee**") was holding 1,64,800 shares of the Company (representing 5.03% of the shareholding of the Company) in the March 2005 quarter. It was also observed that the Noticee sold/transferred 50,000 shares (representing 1.53% of the shareholding of the Company) on May 31, 2005 and 1,00,000 shares (representing 3.05% of the shareholding of the Company)

on June 03, 2005 in off-market; thereby bringing down her holding to 0.45%. However, it was alleged that that the Noticee failed to make disclosures as required under Regulation 13(3) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer vide order dated January 16, 2014 and the said appointment was conveyed vide proceedings of the Whole Time Member dated January 22, 2014 to inquire and adjudge under Section 15A(b) of the Securities and Exchange Board of India Act, 1992, (hereinafter referred to as "**SEBI Act, 1992**"), the alleged violations of provisions of Regulation 13(3) r/w Regulation 13 (5) of PIT Regulations committed by the Noticee.

SHOW CAUSE NOTICE, HEARING & REPLY

3. 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 January 31, 2014, calling upon the Noticee to show cause why an inquiry should not be held against her under Rule 4(3) of the Adjudication Rules and penalty be not imposed under Section 15A(b) of SEBI Act, 1992 for the alleged violations.

4. The aforesaid SCN was duly delivered to the Noticee on February 01, 2014. Subsequently, vide letter dated February 06, 2014 the Noticee acknowledged the receipt of the SCN and requested for additional 15 days' time to submit reply. Thereafter, vide Notice of Inquiry dated February 21, 2014; the Noticee was given an opportunity of personal hearing on March 05, 2014 and the Noticee was advised to submit her reply, if any, on or before March 05, 2014.

5. On the scheduled date of personal hearing, Smt. Shailashri Bhaskar, Authorised Representative (hereinafter referred to as "AR") of the Noticee appeared and made the following submissions:

"We are making submissions vide letter dated March 04, 2014. Further, the Company was under BIFR and was discharged in September 2009. Since the Company was in difficult times, no records were maintained and our interest was only to revive the Company by transferring the shares to the brother in law of the Noticee. In view of our submissions, a lenient view may please be taken. We have no further submissions to make in the matter."

6. The Noticee had made the following submissions vide her letter dated March 04, 2014:

"I was the wife of one of the promoter shareholders of Ashok Alco Chem Limited and the company was controlled and managed by Ashok Organic Industries Limited. Due to certain family settlements the entire shareholding of the company was finally transferred to Dr. Anil Kadakia. In this process, the shares held by me were disposed off by way of inter-se transfers and market transactions in the year 2005."

Since the transaction took place many years ago, I do not recollect whether any disclosures were made by me to the stock exchange under SEBI (Prevention of Insider Trading) Regulations, and I do not have any copies of the same.

In case there has been no filing it has been only due to sheer ignorance of the requirement and there was no malafide intention. Further, I would also like to submit that there was no change in control of the company and the control remained within our own family after these sales.

On the basis of the above submissions, I request you to kindly excuse the non filing if any, and drop any further proceedings against me."

ISSUES FOR CONSIDERATION

7. 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 13(3) read with 13(5) of PIT Regulations?
 - B. Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?
 - C. 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

8. 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 13(3) read with 13(5) of PIT Regulations?

9. The provisions of Regulation 13(3) and 13(5) of PIT Regulations read as under:

SEBI (Prohibition of Insider Trading) Regulations, 1992

- 13(3)** *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(5)** *The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 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.*

10. From the SCN, I note that the Noticee was holding 1,64,800 shares of the Company (representing 5.03% of the shareholding of the Company) in the March 2005 quarter. I also note that the Noticee sold/transferred 50,000 shares (representing 1.53% of the shareholding of the Company) on May 31, 2005 and 1,00,000 shares (representing 3.05% of the shareholding of the Company) on June 03, 2005 in off-market. Therefore, the Noticee had reduced her shareholding in the Company from 5.03% to 0.45% as a result of which the Noticee was under obligation to make required disclosure to the Company under Regulation 13(3) of PIT Regulations within the time limit prescribed under Regulation 13(5) of PIT Regulations.

11. I note that the Noticee, in her reply dated March 04, 2014 has submitted that due to certain family settlements the shares held by her were disposed by way of inter-se transfers and market transactions in the year 2005. During the course of personal hearing the AR of the Noticee submitted that the Company was under BIFR and as the Company was in difficult times, no records were maintained and interest of the Noticee was only to revive the Company by transferring shares to the brother in law of the Noticee. However, I am of the considered opinion that these does not absolve the Noticee from her duty of making necessary disclosures under Regulation 13(3) of PIT Regulations.
12. In view of the above, I hold that the Noticee was under an obligation to make the required disclosures under Regulation 13(3) of PIT Regulations, which the Noticee failed to do. Therefore, the Noticee has violated the provisions of Regulation 13(3) read with Regulation 13(5) of PIT Regulations.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?

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

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

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.

14. I note that the Noticee in her reply dated March 04, 2014 has submitted that *"In case there has been no filing it has been only due to sheer ignorance of the requirement and there was no malafide intention. Further, I would also like to submit that there was no change in control of the company and the control remained within our own family after these sales"*. However, the Hon'ble Supreme Court of India in Civil Appeal No.9523-9524 of 2003 in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC), has held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant"*.
15. As already observed, the Noticee disposed substantial shares of the Company but failed to make disclosures as required under Regulation 13(3) r/w 13(5) of PIT Regulations. Hence, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

ISSUE 3: 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?

16. 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."*

17. 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. The Noticee was under obligation to make the necessary disclosure to the Company which in turn would have made the necessary disclosures to BSE, in terms of provisions of PIT Regulations. However, as stated earlier, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making disclosure, Noticee had concealed the vital information which is detrimental to the interest of investors in securities market. Further, there is nothing on record to indicate that the default of the Noticee was repetitive.
18. In the forgoing paragraphs it is now established that the Noticee failed to make necessary disclosures under Regulation 13(3) r/w 13(5) of PIT Regulations. Considering the facts and circumstances of the case and the violation committed by the Noticee, I find that imposing a penalty of ₹ 4,00,000/- (Rupees Four Lakhs only) for violation of Regulation 13(3) r/w 13(5) of

PIT Regulations on the Noticee would be commensurate with the violation committed by her.

ORDER

19. In terms of the provisions of the SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 4,00,000/- (Rupees Four Lakhs only) under Section 15A(b) of SEBI Act, 1992 for violation of Regulation 13(3) read with Regulation 13(5) of PIT Regulations on Mrs. Urvashi Ashok Kadakia.
20. 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 the Division Chief, Integrated Surveillance Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.
21. 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: March 12, 2014
Place: Mumbai

Jayanta Jash
Adjudicating Officer