

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 181 of 2011

Date of decision : 22.12.2011

M/s. Alka Securities Ltd.

Maitri, Plot No.10,

Road no.10, Nutan Laxmi Society,

JVPD, Juhu,

Mumbai – 400 054.

..... Appellant

Versus

Securities and Exchange Board of India

SEBI Bhavan, Plot No.C-4A, 'G' Block,

Bandra Kurla Complex, Bandra (East),

Mumbai – 400 051.

..... Respondent

Mr. V. M. Singh, Advocate for the Appellant.

Mr. Prateek Seksaria, Advocate with Mr. Mobin Shaikh, Advocate for the Respondent.

Coram : P. K. Malhotra, Member
S.S.N. Moorthy, Member

Per : P. K. Malhotra, Member

This order will dispose of two Appeals no. 179 and 181 of 2011 which arise out of same set of facts. For the sake of convenience, facts are being taken from Appeal no. 181 of 2011. These appeals are directed against the orders both dated June 28, 2011 passed by the adjudicating officer imposing a monetary penalty of Rs.10 lakh each on the appellants under Section 15HA of the Securities and Exchange Board of India Act, 1992 (for short the Act) for violating regulations 3 and 4 of the Securities and Exchange

Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (for short FUTP Regulations).

2. The appellant is a stock broker registered with the Securities and Exchange Board of India (for short the Board) and its shares are listed on the National Stock Exchange Limited (NSE). The appellant was served with a show cause notice dated July 20, 2010 alleging that despite steep reduction in the promoters' shareholding, the company and its promoters including the appellant misled the shareholders and investors by making inflated and palpably incorrect disclosures to NSE regarding promoters' shareholding. The allegation is that the mandatory quarterly disclosures of shareholding pattern to the public through NSE were incorrect from quarter to quarter. It was on this count that the appellant was said to have violated regulations 3 and 4 of FUTP Regulations which prohibit persons from dealing in securities in a fraudulent manner and from indulging in fraudulent and unfair trade practices in securities. It was also alleged that the act of the appellant in making false disclosures to NSE were devices to manipulate the dealing in the scrip of the company.

3. On consideration of the material collected by the adjudicating officer during the course of the enquiry and taking note of the reply filed by the appellant, the adjudicating officer found that the appellant had misled the investors and the public by disclosing inaccurate promoter shareholding to NSE and was therefore guilty of violating regulations 3 and 4 of the FUTP Regulations. Hence this appeal.

4. We have heard the learned counsel for the parties who have taken us through the record and the impugned order. On the same set of facts, action was initiated against Smt. Alka Pandey who was the promoter and managing director of the company. She was also charged for violating provisions of regulations 3 and 4 of FUTP Regulations. While deciding her appeal (No. 180 of 2011 decided on November 15, 2011), this Tribunal has held as under:

“ The disclosures made by the appellant from time to time have been tabulated in the form of a chart which is referred to in paragraph 23 of the impugned order and the same is reproduced hereinafter for facility of reference.

		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	15.33
	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

The figures mentioned in the aforesaid chart have not been disputed by the learned counsel appearing for the appellant. A mere look at the chart would make it clear that as on March 31, 2009, the actual promoter holding in the company was 13.93 per cent and what was disclosed to BSE was 54.12 per cent. There is huge variance in the two figures. The fact that the promoters hold a substantial part of the share capital in a company has its own impact on the investors and the public and if the figures are inaccurate or inflated, it is obvious that the investors and the public are being defrauded. The explanation that has been furnished by the learned counsel for the appellant for this huge variance in the two figures is that the shares representing the difference between the two figures had in fact been pledged with Dena Bank some time in the year 1999 and, according to the appellant, the respondent Board failed to take into account these pledged shares. This explanation cannot be accepted. It is common case of the parties that 27 per cent of the total share capital of the company that was held by the promoters had been pledged with Dena Bank by way of security for the trading facility which it had provided to one of its sister concern. The share certificates had been delivered to the bank in physical form. It is also not in dispute that some time in the year 2006/07 Dena Bank got the shares transferred in its own name by invoking the pledge. It is also the admitted position that Dena Bank, thereafter, transferred those shares in its own name and later transferred them in the names of about 225 persons. We have on record letters from some of the persons to whom the shares were transferred by Dena Bank stating that the applicants wish to purchase the shares of Alka Securities. This was done in the year 2008 and thereafter. From the chart reproduced above, it is clear that the disclosures made by the appellant regarding promoter shareholding were subsequent to the transfer of shares by Dena Bank to the aforesaid 225 persons. It, thus, follows that when the disclosures were made the shares were not under pledge with Dena Bank which had not only got the shares transferred to its own name by invoking the pledge but had further sold the shares to other persons. This being the position, we cannot accept the contention on behalf of the appellant that the pledged shares were not taken into account by the respondent Board. The disclosures made by the appellant are on the face of it inaccurate and the promoter shareholding has been highly inflated. As already observed, such misleading disclosures to a stock exchange is meant to create a wrong impression in the mind of the investors luring them to invest in the company. We are, therefore, satisfied that the provisions of Regulations 3 and 4 of the FUTP Regulations had been violated. In this view of the matter, the imposition of penalty of ₹ 10 lakhs is justified.”

We are of the view that the above reasoning squarely applies to the company as well as to the appellant in Appeal no. 179 of 2011. Learned counsel for the appellant tried to distinguish these two appeals from the appeal of Alka Pandey stating that Brijesh Kothari, who is the appellant in Appeal no. 179 of 2011, and M/s. Alka Securities Ltd., which is the appellant in Appeal no. 181 of 2011, cannot be held guilty of violating the provisions of FUTP Regulations because their case stands on a different footing. The appellant in Appeal no. 179 of 2011 was only one of the directors and was not looking after the day to day affairs of the company whereas Alka Pandey was the managing director handling the day to day affairs of the company. We are unable to agree to this argument of the learned counsel for the appellant. In the show-cause notice dated July 20, 2010 it was specifically alleged that the appellant was a director of the company and he acted in contravention of the provisions of the Act, rules and regulations made thereunder. This allegation has not been denied in the written reply. The adjudicating officer has recorded a finding that the appellant, being the director of the company, was in charge of and was responsible to the company for the conduct of its business. A letter dated June 24, 2009 has also been placed on record by the Board which shows that the appellant was responding to the letters of the Board relating to the affairs of the company. We have, therefore, no hesitation in upholding the finding of the adjudicating officer that the appellant, being a director of the company, was in-charge of and was responsible to the company for the conduct of its business. In regard to company's appeal, it was stated by the learned counsel for the appellant that the company has no mind of its own and it acts only through its directors. According to him, by punishing the company the current shareholders are being punished. We are unable to accept this argument either. Section 27 of the Act, inter alia, provides that when an offence under the Act has been committed by a company, every person who at the time the offence was committed was in-charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against. This provision also applies to the violation of the regulations framed under the Act. Therefore, we are unable to accept the

argument that since the company acts through its directors, the company cannot be punished for the violations in question. Following our earlier order dated November 15, 2011 in Appeal no. 180 of 2011, we uphold the findings of the adjudicating officer.

In the result, both the appeals are dismissed with no order as to costs.

Sd/-
P. K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

22.12.2011
Prepared & compared by-ddg