

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 178 of 2011

Date of Decision : 22.12.2011

Shri Mahendra Pandey
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 : S.S.N. Moorthy, Member

This appeal is directed against imposition of a penalty of ₹ 10 lacs for failure to make disclosures under Regulation 13(4) read with 13(5) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulation, 1992 (for short Insider Trading Regulations). The Securities and Exchange Board of India (for short the Board) observed a sudden spurt in the price and trading volumes in the shares of Alka Securities Ltd. (for short the company). Detailed investigations were conducted in respect of dealings in the scrip of the company during the period September, 2008 to July, 2009. During investigation it was observed that the appellant had sold / transferred 5,23,690 shares of the company and bought / received 8,04,490 shares of the company. The adjudicating officer issued a show cause notice to the appellant on July 15, 2010 alleging that the appellant, being a promoter director, traded substantially in the shares of the company, but failed to make disclosures as per

Insider Trading Regulations and so it was proposed to take necessary action for the above omission of the appellant.

2. On receipt of the show cause notice, the appellant acknowledged its receipt but sought adjournment on various occasions for filing replies. After several opportunities the appellant, along with other directors of the company, filed certain common submissions to the show cause notice. The adjudicating officer came to the finding that the appellant, being a promoter director of the company, was under obligation to make the prescribed disclosures under Insider Trading Regulations and for violating the relevant provisions of Regulation 13(4) and 13(5) of the above regulations penalty was called for. Accordingly, a penalty of ₹ 10 lacs was imposed.

3. We have heard the learned counsel for the parties. The principal argument of the appellant's counsel is that the appellant is neither a director nor an officer of the company and so there is no question of failure to comply with the provisions of Insider Trading Regulations contained in Regulation 13(4) and 13(5). According to the learned counsel for the appellant, the adjudicating officer has proceeded on the assumption that the appellant is a director of the company. It is strenuously argued that the imposition of penalty on the appellant, who is neither a director nor an officer of the company, is not sustainable.

4. On a consideration of the facts of the case and the provisions relating to Insider Trading Regulations we are of the view that the case requires a fresh consideration and so it deserves to be remanded. Regulation 13(4) of Insider Trading Regulations reads as under:

“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.”

It is clear that a disclosure has to be made by a person who is a director or officer of a listed company. In the grounds of appeal it is submitted that the appellant is not a director of the company. However, the adjudicating officer has proceeded on the assumption that the appellant is a director of the company. He has not brought on record any material in support of the stand taken by him. During the hearing of the appeal, learned counsel for the respondent filed a communication from the National Stock Exchange Ltd. which confirmed that the appellant was the compliance officer of Alka Securities for the period under investigation. However, it is contended that a compliance officer may not fall within the definition of ‘officer’ as appearing in Regulation 2(g) of Insider Trading Regulations. It is necessary to have a look at Section 2(30) of the Companies Act, 1956 to understand the meaning of the term ‘officer’ as contained in Regulation 2(g) of the Insider Trading Regulations. Section 2(30) of the Companies Act, 1956 defines an ‘officer’ as under:

“officer” includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act;”

A reading of the above provision makes it clear that an ‘officer’ envisaged in Section 2(30) of the Companies Act, 1956 is one who can direct or influence the affairs of the company as distinguished from a mere compliance officer.

5. In the impugned order by which penalty has been imposed, the adjudicating officer has dealt with the requirements under Regulation 13(4) and 13(5) of the Insider Trading Regulations in para 16 of the order. After considering the common submissions filed by the directors, the adjudicating officer has concluded as under:

“I also hold that the Noticee was under an obligation to make the required disclosures under Regulation 13(4) of PIT Regulations to the Company and to the Stock Exchange, which the Noticee failed to do. Therefore, the Noticee has violated the provisions of Regulation 13(4) read with 13(5) of PIT Regulations.”

It is necessary to bring on record necessary material to establish that the appellant is either a director or an officer of the company. The adjudicating officer has failed in

this regard. On a perusal of the record it is noticed that the appellant has also failed to avail himself of the opportunities provided by the adjudicating officer and thereby failed in specifically answering the charges levelled in the show cause notice. The appellant has not put forward any argument upfront in respect of the provisions contained in Regulation 13(4) and 13(5) on which the show cause notice was based.

6. In view of the facts and legal position stated above, we remand the case to the Board for fresh consideration. The appellant shall file his reply or explanation, if any, within a period of three weeks from today. The Board shall consider the explanation / reply of the appellant and pass necessary orders in accordance with law.

In the result, the impugned order is set aside and the matter remanded to the Board for fresh consideration as mentioned above with no order as to costs.

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

22.12.2011
Prepared & Compared By: msb