

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Appeal No. 177 of 2011**

**Date of decision: 20.12.2011**

Shri Mahesh Kothari  
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 (Oral)

This appeal is directed against the order dated June 28, 2011 passed by the adjudicating officer imposing a penalty of ₹ 2 lacs on the appellant under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 (for short the Act) for violating Regulation 7 (1A) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (for short the takeover code). On noticing a sudden spurt in the price and trading volumes in the shares of M/s. Alka Securities Limited (the company), the Board carried out investigations in respect of dealings in the scrip of the company for the period from September 2008 to July 2009. It was observed that the appellant, as a promoter and a director, traded substantially in the shares of the company but failed to make disclosures as required under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (for short the insider trading regulations) and the takeover code. A show cause notice was issued to the

appellant on July 15, 2010 calling upon him as to why action should not be taken against him for the aforesaid violations. In its reply filed to the Board, the appellant denied the allegations. However, he did not appear before the adjudicating officer in response to the summonses issued on different dates. The adjudicating officer proceeded with the enquiry taking into account the material available on record. The charge of violation of insider trading regulations was not proved. However, the appellant was held guilty of violating Regulation 7(1A) of the takeover code for not making the necessary disclosures with regard to its shareholding pattern and, therefore, the adjudicating officer imposed a penalty of ₹ 2 lacs on the appellant under Section 15A(b) of the Act. Hence this appeal.

2. We have heard the learned counsel for the parties for sometime and are of the view that matter needs to be remanded to the Board to record a specific finding on the issue whether the appellant had acquired shares or voting rights of the company either under Regulation 11(1) or under second proviso to sub-regulation (2) of Regulation 11 of the takeover code to attract the provisions of Regulation 7(1A) of the takeover code. Regulation 7(1A) of the takeover code requires that 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 alongwith the aggregate shareholding after such acquisition of sale. While recording his findings in para 19 of the impugned order the adjudicating officer has observed as under:-

“19. I note that the provisions of Regulation 7(1A) of SAST Regulations is quite 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. As already observed, on March 25, 2009, the Noticee had sold 15,00,000 shares of the Company which amounted to transfer of shares comprising 3% of the paid up capital of the Company. Therefore, the Noticee was under obligation to make disclosure 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.”

It is seen that the adjudicating officer has not recorded any finding whether the appellant had acquired shares or voting rights in question under sub-regulation (1) of Regulation 11 or under second proviso to sub-regulation (2) of Regulation 11 of the takeover code. In the absence of any finding in this issue, the appellant cannot be held guilty of violating Regulation 7(1A) of the takeover code.

We, therefore, set aside the impugned order and remand the matter to the Board with a direction to the appellant to file its reply, if any, within a period of three weeks from today and thereafter the Board will pass a fresh order in accordance with law. There will be no order as to costs.

Sd/-  
P. K. Malhotra  
Member

Sd/-  
S. S. N. Moorthy  
Member

20.12.2011  
Prepared & Compared by  
ptm