**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. PKB/ AO- 121 /2010]**

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**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**

**Mitesh Jagdish Jani**
**PAN: ACNPJ6429M**

**In the matter of Alka Securities Ltd.**

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## I. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") observed spurt in the price and trading volumes in the shares of Alka Securities Ltd. (hereinafter referred to as "Company"). It was observed that large volume of off market transfers in the shares of the Company were executed and on many occasions the Promoters of the Company were also involved in the off market transfers and these shares were subsequently traded at BSE. Therefore, an immediate examination was carried out by SEBI into the dealings in the scrip of the Company and interim Order was passed by the Whole Time Member of SEBI on July 28, 2009. This interim Order was confirmed vide SEBI Orders dated October 16, 2009 and October 30, 2009.

2. SEBI conducted detailed investigation into the alleged price manipulation in the scrip of the Company during the period from September, 2008 to July, 2009. It was observed that large number of entities including Mitesh Jagdish Jani (hereinafter referred to as "Noticee") had received the shares of the Company in the off market from the promoters.

3. To examine the role of the Noticee, summons dated December 9, 2009 was issued to the Noticee vide hand delivery, requiring the Noticee to submit the information required in the enclosed Annexure to the summons latest by December 18, 2009 and the same was duly received by the Noticee. The Noticee did not reply to the aforesaid summons.

4. Therefore, Notice was published in the Hindustan Times and Hindustan (Hindi) on March 21, 2010 mentioning that summons were issued in relation to the investigation into the dealings in the scrip of the Company and that SEBI had either not received the responses or received incomplete replies from the entities, whose names were mentioned in the Notice. The Notice mentioned that copies of the relevant summons were available on SEBI website and advised the entities to ensure that their reply to the summons reach SEBI by 23-03-2010. The Noticee did not reply to the aforesaid Notice also.

5. Therefore, Adjudication Proceedings under Chapter VI A of the SEBI Act, 1992 (hereinafter referred to as "Act") were initiated, *inter alia,* in respect of Noticee and the undersigned was appointed as the Adjudicating Officer vide Order dated March 31, 2010 to inquire into and adjudge the alleged non-compliance with summons by the Noticee in the scrip of the Company.

## II. SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice (hereinafter referred to as "SCN") dated June 15, 2010 was issued to the Noticee under Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") calling upon the Noticee to show cause why inquiry should not be held against the Noticee in terms of Rule 4 of the Adjudication Rules for the alleged violation of provisions of sections 11C(2) and 11C(3) of the Act. The SCN alleged that the Noticee did not comply with the summons and the same has hampered the investigations into the scrip of the Company.

7. The SCN was delivered to the Noticee vide hand delivery and the same was duly received by the Noticee on June 17, 2010 and the signed

acknowledgement of receipt of same is available on record. The Noticee did not reply to the same.

8. The SCN called upon the Noticee to show cause as to why inquiry should not be held in respect of the Noticee in terms of Rule 4 (3) of the Adjudication Rules read with section 15I of the Act and clearly specified that the Noticee's reply, if any, should reach the undersigned within 14 days from the date of receipt of the SCN, failing which, it shall be presumed that the Noticee has no reply to submit and the matter would be proceeded further on the basis of material available on record.

9. As no reply to the SCN was received, it was decided to initiate inquiry in respect of the Noticee and Notice of Inquiry dated August 13, 2010 was issued to the Noticee vide which the hearing was scheduled to be held on September 1, 2010. The Notice of Inquiry specified that the SCN was duly received by the Noticee and that no reply from the Noticee has been received. The Notice of Inquiry was also duly received by the Noticee on August 18, 2010 and signed acknowledged receipt of the same is available on record.

10. The Notice of Inquiry clearly specified that in case the Noticee or his authorized representative fail to appear for the inquiry on the cited date, the undersigned will conduct the Proceedings on the basis of material available on record in terms of Rule 4(7) of the Adjudication Rules and that no further opportunity of personal hearing shall be granted.

11. However, neither the Noticee nor anyone on his behalf attended the Inquiry nor any reply from the Noticee was received.

12. In observance of the principles of natural justice, one last opportunity was accorded to the Noticee vide Notice of Inquiry dated September 3, 2010 vide which the Inquiry was scheduled to be held on September 16, 2010. The Notice of Inquiry was also duly received by the Noticee on September 4, 2010 and the signed acknowledgment of receipt of the same is present on record. Yet, the Noticee or anyone on his behalf neither attended the hearing nor made any submissions till date.

13. I note that the SCN was duly received by the Noticee and two Notice of Inquiry, each dated August 13, 2010 and September 3, 2010 were duly received by the Noticee and the acknowledgment of receipt of all of these are present on record. I also find that neither the Noticee replied to any of the Notices nor attended the Inquiry on the scheduled dates. The Noticee was reminded regarding the non receipt of any reply from him vide both the Notice of Inquiry and yet the Noticee did not make any submissions. It is pertinent to note that there has been no communication whatsoever from the Noticee to us. I note that enough opportunities have been accorded to the Noticee to present his case and all principles of natural justice have been duly complied with. Therefore, in light of the above, the instant Adjudication Proceedings in respect of the Noticee is proceeded on the basis of the material available on record.

## III. ISSUES FOR CONSIDERATION

14. On perusal of the material available on record, I have the following Issues for consideration, viz.,

***ISSUE 1: Whether the Noticee has violated provisions of sections 11C(2) and 11C(3) of the Act?***

***ISSUE 2: Whether the Noticee is liable for monetary penalty under section 15A(a) of the Act?***

***ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee, taking into consideration the factors mentioned in section 15J of the Act?***

## IV. FINDINGS

15. 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 sections 11C(2) and 11C(3) of the Act?***

16. The provisions of sections 11C(2) and 11C(3) of the Act read,

***"Section 11 C: Investigation***

*(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.*

*(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation."*

17. To decide the allegation of non-compliance with the summons issued by SEBI, the foremost requisite is to find if the summons was duly received by the Noticee.

18. It is observed that summons dated December 9, 2009 was issued to the Noticee vide hand delivery, requiring the Noticee to submit the information required in the enclosed Annexure to the summons latest by December 18, 2009 and the summons was duly received by the Noticee and the copy of summons and Annexure alongwith proof of receipt was enclosed as Annexure-2 to the SCN.

19. I find that the summons was delivered to the Noticee vide hand delivery at the same address, wherein subsequently, the SCN and two Notice of Inquiry were also duly received by the Noticee by hand. The summons was received by the Noticee on December 11, 2009 and the signed acknowledged receipt of the same is present on record.

20. I find that despite receiving the summons, the Noticee did not reply to the same. Therefore, subsequently, Notice was published in the Hindustan Times and Hindustan (Hindi) on March 21, 2010 mentioning that summons were issued in relation to the investigation into the dealings in the scrip of the Company and that SEBI had either not received the responses or received incomplete replies from the entities whose names were mentioned in the Notice. The Notice mentioned that copies of the relevant summons were available on SEBI website and advised the entities

to ensure that their reply to the summons reach SEBI by 23-03-2010 and copy of the Newspaper Notice was duly enclosed as "Annexure-3" to the SCN. The name of the Noticee was published at Serial No. 274 of the Notice.

21. I find that the Noticee did not reply to the aforesaid Notice also.

22. Therefore, with respect to service of the summons dated December 9, 2009, I find that there can be no doubt that the same was received by the Noticee. And moreover, in the present case, even when after the non compliance with the summons dated December 9, 2009, when Noticee's name was published in the Newspaper Notice, there was no compliance with the summons. Therefore, I find that there is no dispute about the service of the summons dated December 9, 2009, for which the signed acknowledged receipt is available on record. This has also not been disputed by the Noticee despite enough opportunities provided to him.

23. Further, it is observed that the summons clearly stated that *"Please take notice that, in default of submission of information on the above mentioned date, investigation proceedings would be continued. Further, take notice that without prejudice to the provisions of any other law for the time being in force, if you fail to produce the books of accounts and/or documents as required, SEBI will initiate adjudication proceedings against you under which you could be levied a penalty of one lakh rupees for each day during which such failure continues, or one crore rupees, whichever is less, as provided under section 15A of Securities and Exchange Board of India Act, 1992. Further, criminal prosecution may also be launched against you under section 11 C (6) of Securities and Exchange Board of India Act, 1992 which provides for a punishment with imprisonment for a term which may extend to one year or with fine which may extend to rupees one crore, or with both, and also with a further fine which may extend to five lakh rupees for each day after the first, during which the failure or refusal continues."*

24. Moreover, even the Newspaper Notice had mentioned that responding to the summons is a statutory requirement under section 11 of the Act and persons not complying with the same shall be liable for appropriate action as mentioned under the Act.

25. Therefore, it is observed that the Noticee has not complied with the summons dated December 9, 2009 which was delivered to the Noticee vide hand and which was also intimated to the Noticee vide Press Advertisement as detailed above.

26. The second question for deciding the non-compliance with summons issued by SEBI after adjudging the proof of service of the summons is to find out the relevance of the information sought by the summons dated December 9, 2009 which the Noticee has not provided.

27. Vide summons dated December 9, 2009 issued under section 11C(3) of the Act, the Noticee was summoned to furnish the information required in the enclosed Annexure to the summons to the Investigating Authority by December 18, 2009. The details specified in the Annexure are given below:

1. *Were you holding any shares of Alka Securities Ltd. as on November 1 2008? If yes. Please mention the quantity of these shares.*
2. *Whether you are a regular trader in the scrip of Alka Securities Ltd., if not, why you have suddenly traded in the scrip during November 1, 2008 to March 31, 2009*
3. *Datewise trading details in the scrip of Alka Securities Ltd for the period November 1, 2008 to March 31, 2009. The details may be provided in a table with column showing: date of trading, name of the exchange, broker name, subbroker name, purchase quantity, purchase rate, date of payment, sale quantity, sale rate, date of payment received.*
4. *If you have done any off market transactions also provide the details of such transaction separately. The details may be provided in a table with column showing date of trading, purchase quantity, purchase rate, name of the entity from whom purchased, date of payment, sale quantity, sale rate, name of the entity to whom sold and date of payment received.*
5. *Reason for investing in Alka Securities Ltd. Specify the amount profit / loss made in this scrip for the period November 1, 2008 to March 31, 2009*
6. *Copy of the demat account transactions statement for the period November 1, 2008 to March 31, 2009. State whether the purchases as mentioned in para 1, 2 and 3 were through own funds or borrowing / financing.*
7. *Please provide the details of all your bank account and the account statement for each of them from January 1, 2008 to till date*
8. *State whether you are in any way related to any of the directors / promoters / personnel of the company Alka Securities Ltd in any way. Please provide details. Whether you have any kind of relationship with the entities/persons mentioned in the in the SEBI order in this matter (dated July 28, 2009. October 16, 2008 and October 30,2008). If yes, please provide details thereof.*

9. *Please confirm whether the compliance as required under the SEBI ( Prohibition of Insider Trading ) Regulation-1992 and SEBI ( Substantial Acquisition of Shares and Takeover) Regulations- 1997 were made or not if required. If yes your reply should be supported by the documentary evidence.*
10. *Also provide us the following details*
a) *For Companies - Name and address of all the promoters, directors, group companies and associate companies and top 10 shareholders of yours during January 2008 to till date.*
b) *For Individuals – Full Names and complete address of all your family members ( Parents, spouse, children, brothers , sisters and in laws)*
11. *Any other issue you may want to draw our attention to, w.r.t your trading in Alka Securities Ltd.*
12. *Also mention the latest address and mobile/telephone no for future communication in your reply.*

28. SEBI observed spurt in the price and trading volumes in the shares of the Company. It was observed that large volume of off market transfers in the shares of the Company were executed and on many occasions the Promoters of the Company were also involved in the off market transfers and these shares were subsequently traded at BSE. Therefore, an immediate examination was carried out by SEBI into the dealings in the scrip of the Company and interim Order was passed by the Whole Time Member of SEBI on July 28, 2009. This interim Order was confirmed vide SEBI Orders dated October 16, 2009 and October 30, 2009.

29. Thereafter, SEBI conducted detailed investigation into the alleged price manipulation in the scrip of the Company during the period from September, 2008 to July, 2009. It was observed that large number of entities including the Noticee had received the shares of the Company in the off market from the promoters. To examine the role of the Noticee, summons dated December 9, 2009 was issued and the contents of the Annexure clearly show how relevant the information was, given the background of the case. The information of all entities was required to arrive at the accurate findings. Therefore, there can be no doubt that the information required from the Noticee was relevant for the Investigating Authority to not only study the role of Noticee but to arrive at the accurate findings for all involved entities as there was grave suspicion of manipulation in the dealings in the scrip of the Company warranting immediate action by SEBI through Interim Order. I also note that the information sought from the Noticee was pertaining to him and was available with him.

30. In this backdrop, it can't be denied, as it stands firmly established that the information sought from the Noticee was important and non submission of the same impaired the investigation and indeed, the information was required to find out the truth in the matter to protect the interest of the investors in the securities market and conclude the investigation.

31. Therefore, had the information sought from the Investigating Authority would have been made available to it, the Investigating Authority would have been in a better position to ascertain possible violations of the provisions of Act and Rules and Regulations made thereunder not only in respect of the Noticee but in respect of the case in entirety. In this context, it can be established beyond doubt that the information which was not provided by the Noticee was relevant to find the truth in the matter and acted as a spoke in the whole Investigation Process.

32. From the forgoing paragraphs it is observed that the Noticee failed to provide information to the Investigating Authority. The said information which was sought vide the summons dated December 9, 2009 was very relevant and important in the whole Investigation process. Therefore, it is conclusively established that the Noticee did not comply with the summons dated December 9, 2009.

33. Moreover, the Noticee also did not revert back and supply the information after the Notice was published on March 21, 2010 requiring the submission of information by entities in the scrip of the Company. This clearly showcases the non co-operative and callous attitude of the Noticee towards the investigation carried out by SEBI. I also note that such an attitude of the Noticee is also demonstrated when the Noticee despite receiving the SCN and two Notice of Inquiry, failed to make any submissions or appear before the undersigned.

34. Compliance with summons during Investigation is a statutory duty cast upon the Noticee and failure to comply with the same should be viewed strictly as the Noticee has abstained from providing information to the Investigating Authority. Such an irresponsible and willful abstinence towards compliance with a statutory duty also affects the discharge of the statutory responsibilities of SEBI.

35. In view of the above, I find that the Noticee did not comply with the summons dated December 9, 2009 which was delivered to the Noticee vide hand and which was also intimated to the Noticee vide Press Advertisement as detailed above and hence, has violated the provisions of sections 11C(2) and 11C(3) of the Act and the information sought by the Investigating Authority was absolutely relevant in the Investigation Process.

36. I also note that Hon'ble SAT vide Order in the matter of *M/s. Kajol Impex Ltd.* v. *SEBI,*[1] has opined that *"It is, thus, clear that by not furnishing the requisite information and by not appearing before the Investigating Officer the Appellant hampered the investigations which is, indeed, a very serious matter. The market regulator under the provisions of the Act will not be able to perform its statutory functions and duties if persons connected with the securities market throttle the investigations by not responding to the summons issued to them. In the present case, the appellant did not even respond to the show cause notice issued by the adjudicating officer and at no stage of the proceedings did it cooperate with the authorities nor did it avail of the opportunity of appearing in person before the adjudicating officer. In these circumstances, we find that the monetary penalty imposed on the appellants is reasonable and calls for no interference by us in appeal."*

***ISSUE 2: Whether the Noticee is liable for monetary penalty under section 15A(a) of the Act?***

37. The provisions of section 15A(a) of the Act reads,

> ***"Penalty for failure to furnish information, return, etc.***
> ***15A.*** *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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;"*

38. The Noticee under sections 11C(2) and 11C(3) of the Act was required to produce details mentioned in the annexure to summons. In view of non compliance with the summons dated December 9, 2009 which was delivered to the Noticee vide hand and which was also intimated to the Noticee vide Press Advertisement as detailed above and Noticee's failure

[1] Appeal No. 167 of 2009, date of decision: 8.10.2009

to submit the relevant information and documents, the Noticee is liable for monetary penalty under section 15A(a) of the Act.

***ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee, taking into consideration the factors mentioned in section 15J of the Act?***

39. Section 15J prescribes the factors to be taken into account by the Adjudicating Officer while adjudging the quantum of penalty under section 15-I of the Act, the provisions of which read,

*"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."*

40. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the default. Further, the amount of loss caused to an investor or group of investors also cannot be quantified on the basis of the available facts and data. Not only did the Noticee not supply the required information to the Investigating Authority in response to summons dated December 9, 2009 but also did not submit the information in response to the Newspaper Notice published.

41. Moreover, the failure to supply information by the Noticee has impaired the investigation carried out by SEBI into the scrip of the Company and the same should be viewed strictly, as the information was crucial for the investigation and if market players do not supply the information to SEBI and indeed demonstrate non-cooperative behavior, it acts as an impediment for the discharge of the regulatory functions by SEBI. Therefore, the Noticee has demonstrated a very non-cooperative attitude towards the Investigation Process and has ignored his statutory duties. Moreover, this attitude of the Noticee can be confirmed as the Noticee

despite receiving the SCN and two Notice of Inquiry did not respond to them.

42. In the forgoing paragraphs it is now established that the Noticee failed to provide necessary information / documents to the Investigating Authority of SEBI in response to the summons issued under section 11C(3) of the Act. The said information was very relevant and important in the whole Investigation Process. Thereby, it is established beyond doubt that the Noticee tried to evade the information from Investigating Authority, which hampered the Investigation Process. This non cooperation AND violation by the Noticee needs to be viewed seriously. Considering the facts and circumstances of the case and the violation committed by the Noticee, I find that imposing a penalty of ₹ 10,00,000/- (Rupees Ten Lakh only) on the Noticee would be commensurate with the violation of Sections 11C(2) and 11C(3) of the Act by the Noticee.

## V. ORDER

43. Considering the facts and circumstances of the case, in terms of the provisions of Section 15A(a) of Act and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 10,00,000/- (Rupees Ten Lakh only) on Mitesh Jagdish Jani for non compliance with summons issued by Investigating Authority.

44. 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 Shri Biswajit Choudhury, Deputy General Manager, Investigation Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

45. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this Order are being sent to the Noticee and to SEBI.

**DATE: SEPTEMBER 27, 2010** **P. K. BINDLISH**

**PLACE: MUMBAI** **ADJUDICATING OFFICER**