

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

**Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992
against Mayuresh Real Estate & Management Private Limited**

In the matter of Alka Securities Limited

Date of hearing : September 24, 2012

Appearances

For Mayuresh Real Estate & Management Private Limited :

Its Manager, Mr. Shashank Dubey

For the Securities and Exchange Board of India :

1. Mr. B. Rajendran, General Manager
2. Ms. Anitha Anoop, Deputy Legal Adviser
3. Mr. Amit Kapoor, Assistant General Manager and
4. Mr. T. Vinay Rajneesh, Assistant Legal Adviser

1. ASL is a company incorporated under the Companies Act, 1956. Its shares are listed and traded only on the Bombay Stock Exchange Limited (hereinafter referred to as "BSE"). ASL is a trading member of the National Stock Exchange of India Limited and a stock broker registered with SEBI.

2. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted a preliminary examination into the dealings in the shares of ASL during the period - November 2008 to March 2009 on the BSE. The said examination was necessitated after SEBI noticed a sudden spurt in the share price of ASL and the trading volumes during the aforesaid period. SEBI had also detected several surveillance alerts relating to large volumes of off-market transfers in the shares of ASL. The examination revealed that on many occasions, the promoters of ASL were also involved in off-market transfers and those shares were subsequently traded in

the stock exchange. The aforesaid examination was done to ascertain whether the spurt in the share price and trading volumes were in the normal course or whether the same was an outcome of any devise of any unfair trade practices perpetrated by the promoters of ASL in concert with certain other entities.

3. The preliminary analysis into the dealing in the shares of ASL *prima facie* suggested that the promoter entities of ASL transferred shares (*of ASL*) through off-market transactions to certain entities (referred to as the "First Level Entities") who in turn, transferred the said shares, in off-market transactions, to another set of entities (referred to as the "Second Level Entities"). The Second Level Entities had in turn dealt in the said shares at BSE. The trading activity by the entities which are connected to the promoter/company suggested circular trading for creating volumes so as to give the securities market a false impression regarding liquidity of the scrip. The promoters of ASL and the entities (*First Level Entities and the Second Level Entities*) connected to the promoters and ASL, were found to have *prima facie* violated the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter referred to as "the PFUTP Regulations"). The examination also observed that the mandatory quarterly disclosures of the shareholding pattern of ASL to the public made to BSE, were incorrect and apparently false as the changes in the shareholding pattern were not informed to the investors. The same was found to be *prima facie* in violation of the PFUTP Regulations and Clause 35 of the Listing Agreement.

4. Further, the preliminary examination *prima facie* observed that there was a possible exit strategy, wherein the shares were sold to lay investors at prices that have been artificially maintained through sustained circular trading. Therefore, the urgency to intervene on behalf of genuine shareholders and investors was compelling and to ensure that the concerned entities do not cause further damage or loss to the investors and do not breach the integrity of the market, SEBI had, vide an *ad interim ex-parte* Order dated July 28, 2009 (hereinafter referred to as the "Interim Order"), restrained 9 Promoter Level Entities (of ASL), 42 First Level Entities and 317 Second Level Entities, from accessing the securities market and prohibited them from buying, selling or dealing in securities in any manner whatsoever, until further orders. Mayuresh Real Estate & Management Private Limited (hereinafter referred to as "the Noticee") was identified

as one of the Promoter Level Entities of ASL and was also restrained from accessing the securities market and prohibited from buying, selling or dealing in securities in any manner whatsoever, until further orders. The Interim Order, as against the Noticee, was subsequently confirmed vide SEBI Order dated October 16, 2009 (hereinafter referred to as the "Confirmatory Order").

5. In the investigation, SEBI examined the dealings in the shares of ASL for the period between September 01, 2008 and July 31, 2009 (hereinafter referred to as the "investigation period"). The investigation was completed, in compliance with the time frame stipulated by the Hon'ble Securities Appellate Tribunal. As regards the contraventions/lapses committed by the noticee, it was alleged that its shareholding during the relevant period was misrepresented in the disclosures of shareholding submitted by ASL to the stock exchange. It was *prima facie* observed that the noticee and the others of the promoter group of ASL, had triggered regulation 11(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("the Takeover Regulations") by not making a public announcement with respect to their acquisition of shares of ASL during the relevant period. The noticee was also alleged to have contravened certain provisions of the PFUTP Regulations. Therefore, on the basis of the findings of the aforesaid investigation, a Show Cause Notice dated September 06, 2010 (hereinafter referred to as "the SCN") was issued to the Noticee, requiring it to show cause as to why suitable directions under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the SEBI Act"), should not be issued against it for the violations alleged in the SCN, which included -

- (i) restraining the Noticee from accessing the securities market and prohibiting it from buying, selling or otherwise dealing in securities for an appropriate period of time ;
- (ii) issuing appropriate direction to the Noticee under regulation 44 of the Takeover Regulations to make public offer as stipulated therein ; and
- (iii) issue such other directions as deemed fit and proper.

6. As the SCN could not be delivered on the Noticee, a newspaper notice was published on March 27, 2011, wherein the Noticee was advised to approach SEBI within 15 days from the

date of publication, if it wished to avail a personal hearing or to make submissions in the matter. Subsequently, it was discovered that the aforesaid newspaper publication carried the name "*Mayuresh Real Estate Agent Private Limited*" instead of its correct name i.e., Mayuresh Real Estate & Management Private Limited. In view of the same, another newspaper advertisement dated May 16, 2012 was issued informing the Noticee of the instant proceedings and advised it to approach SEBI within 15 days of the said publication, if it wishes to avail a personal hearing or to make submissions. A copy of the SCN was also sent to the latest address of the Noticee on July 10, 2012. The said SCN was received by the Noticee. As the Noticee did not file its reply, a reminder notice dated August 17, 2012 was issued, advising it to reply within 14 days from the service of the reminder notice. Subsequently, the Noticee vide letter dated August 21, 2012, informed SEBI that as on June 30, 2008, it did not hold any shares of ASL and that any false representation of shareholding by the directors/promoters of ASL was not binding on it. It contended, therefore, that the SCN issued to it was not maintainable.

7. The Noticee was afforded an opportunity of personal hearing on September 24, 2012 before me, when it was represented by its manager, Mr. Shashank Dubey. The authorized representative *inter alia* submitted that the Noticee had sold all the shares of ASL held by it in the year 2007 and pursuant thereto, did not hold any shares of ASL. He also submitted that the said off-loading of shares was declared in its balance sheets and that the sale consideration was credited in the Noticee's bank account. As the said submissions were made without any evidence/documentary proof, the authorized representative was given liberty to furnish all the documents in support of his submissions within ten days time. Subsequent to the hearing, the Noticee vide letter dated October 05, 2012 informed SEBI that it was putting its best efforts to obtain documents and that it would submit these to SEBI as soon as possible.

8. Thereafter, vide letter dated November 06, 2012, the Noticee, *inter alia*, submitted as follows :

".....

- *That we were instructed by your good office to produce proof of transaction dated 04/06/2007 regarding sale of ASL shares.*
- *That we hereby submit the following documents for your kind perusal :*

- *Letter of confirmation of accounts dated 10/10/2012 demonstrating sale of 25,95,000 shares of Alka Securities Pvt. Ltd. to Mahesh Kothari Share and Stock Brokers Pvt. Ltd.*
- *Letter from Union Bank of India - Matunga (E) Branch dated 22/10/2012 stating details of transaction for the sale of shares.*
- *Copy of our balance sheet for FY 2007-08 stating our position on the securities under discussion.*

Sir, we believe that the documents submitted are sufficient evidence to prove that our position in Alka Securities Ltd. was squared off on 04/06/2007 i.e. much before your period of contention for this case."

9. I have considered the SCN issued to the Noticee, the aforesaid replies and the documents submitted by the Noticee and other material available on record. At the outset, I note that though the SCN was issued only to the Noticee in the matter, it inadvertently makes reference to *Noticees 1 to 8*. Nonetheless, I proceed to deal with the charges levelled in the SCN.

10. The Noticee has been charged for having violated regulation 11(1) of the Takeover Regulations. The following facts are necessary to understand the basis of this charge :

- (i) Two promoters of ASL, namely, Mrs. Alka Pandey and Mr. Mahesh Kothari had pledged shares of ASL with Dena Bank as security for a loan to be availed by their associate, M/s. Ashwini Trading from the said bank.
- (ii) As M/s. Ashwini Trading had failed to repay the said loan, the bank started selling the pledged shares.
- (iii) Thereafter, a settlement was arrived at with the bank, whereby the borrowers agreed to pay the settlement amount and had arranged to pledge shares to other entities who would make payment directly to the bank. Dena Bank had stated that it received payment from various parties with the help of Mrs. Alka Pandey.
- (iv) The said bank, which had the shares in its demat account, transferred them to 217 entities (*having 225 depository accounts*) as arranged by Mrs. Alka Pandey.
- (v) Mrs. Alka Pandey, the key promoter and the Managing Director of ASL stated that she had arranged 225 entities to acquire those shares from Dena Bank, and

which were given effect on October 15, 2008, October 17, 2008, October 27, 2008 and November 04, 2008. She had referred to the entities as "nominees".

11. In this regard, the SCN had alleged the following :

"9.6 In view of the fact that these entities were admittedly nominees of the noticees as promoters of ASL, it is alleged that the noticees and the said entities are 'persons acting in concert' with the noticees/promoters, and acted in concert while purchasing the shares from Dena Bank, for the purpose of retaining control over ASL.

9.7 It is further stated that as on 14th October, 2008 Dena Bank held 1,36,55,513 shares (27.31 % of share capital) of Alka Securities Ltd. and the promoters held around 33.79% of the share capital of ASL. The noticees acquired 27.31 % stake of ASL from Dena Bank, through their 225 'nominees' as stated above thereby violating Regulation 11(1) of SEBI (SAST) Regulations, 1997. It is therefore alleged that the noticees are liable to be proceeded against under Regulation 44 of the SEBI (SAST) Regulations, 1997, to make an open offer now, as per SAST Regulation."

12. The allegation is that the noticee along with others in the promoter group of ASL were already holding 33.79% shares in ASL, and had acquired 27.31% of ASL shares through 225 nominees without making a public announcement, as required in terms of regulation 11(1) of the Takeover Regulations. The effective dates of acquisition of shares by the promoters of ASL allegedly from the "217 nominees" were, *October 15, 2008, October 17, 2008, October 27, 2008 and November 04, 2008*. In this regard, I have referred to the Shareholding Pattern of ASL for the quarters ending - June 2008, September 2008, March 2009 and June 2009. In the shareholding pattern for the quarter ending June 2008, the Noticee has been identified as belonging to the "Promoter and Promoter Group" of ASL. As per the said disclosure, the Noticee is shown to have held 40,00,000 shares (8% of shares of ASL). However, in terms of the disclosure of the shareholding pattern for the quarter ended September 2008, the Noticee did not hold shares of ASL in the category "Promoter and Promoter Group" of ASL. I also note, from the disclosures of shareholding patterns for the quarters ended March 2009 and June 2009, that the Noticee did not hold shares under the 'promoter and promoter group category' for the period covered under the said quarters. Therefore, on the dates when the shares were acquired by the promoter group of

ASL through their alleged nominees, the Noticee was not part of the promoter and promoter group of ASL. There is also no other material available in the SCN to substantiate as to how the Noticee had contravened regulation 11(1) of the Takeover Regulations. In view of the same, the charge against the Noticee of contravening the provisions of regulation 11(1) of the Takeover Regulations, does not stand established.

13. The SCN also alleges violation of the provisions of regulations 3, 4(1) and 4(2)(a) of the PFUTP Regulations. However, the SCN does not substantiate as to how the Noticee played a role in the creation of artificial volumes in the shares of ASL during the relevant period. Therefore, it is just and reasonable that the Noticee is exonerated of the charge of contravening the aforesaid provisions of the PFUTP Regulations.

14. The SCN has also alleged, on the basis of the analysis of the beneficiary owner accounts of the promoters of ASL in the depository system and the information obtained from the Registrar and Share Transfer Agent of ASL, that the shareholding pattern of the promoters particularly, disclosed by ASL to the BSE was significantly different from the actual shareholding. As per records, the Noticee is shown as a member of the 'promoter and promoter group' category of ASL in the quarter ended June 2008. The difference between the actual and disclosed shareholding of the promoters of ASL, including the Noticee herein, is shown in the Table below :

		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
Alka M. Pandey	Disclosed	91,53,000	1,31,53,000	1,31,53,000	2,55,17,576	51,035,152
	Actual	1,19,25,445	1,29,25,445	52,25,445	62,35,445	12470890
Mahendra Pandey	Disclosed	-	5,23,690	5,23,690	1,43,200	2,86,400
	Actual	2,500	5,26,190	2,500	1,43,200	6,200
Anjuben Mahesh Kothari	Disclosed	1,88,000	1,88,000	1,88,000	-	-
	Actual	-	-	-	-	-
Mahesh N. Kothari	Disclosed	93,47,000	93,47,000	93,47,000	500	1,000
	Actual	1500500	1500500	1500500	5,00	1,000
Brijesh Mahesh Kothari	Disclosed	10,37,500	10,37,500	10,37,500	-	-
	Actual	-	-	-	-	-
Ravi Harendra Pandey	Disclosed	2,58,500	2,58,500	2,58,500	2,000	4,000
	Actual	2,000	2,000	2,000	2,000	4,000
Dimple Kothari	Disclosed	2,70,500	2,70,500	2,70,500		
	Actual	-	-	-	-	-
MKSSB	Disclosed	11,83,989	11,83,989	11,83,989	2,98,903	5,97,806
	Actual	36,63,764	19,22,252	77,40,897	2,98,903	3,89,853
NOTICEE	Disclosed	40,00,000	-	-	-	-
	Actual	10,00,000	-	-	-	-

15. As regards the Noticee, it is noted from the SCN that as on June 30, 2008, its disclosed shareholding in ASL was 40,00,000 shares, whereas its actual shareholding (*as per the records of the registrar and share transfer agent of ASL*) was 10,00,000 shares. The SCN mentioned that the promoter shareholding of ASL was disclosed to be more than 50% over the quarters ended June 2008, September 2008, December 2008, March 2009 and June 2009. Therefore, by showing that the promoters' holding remained over 50% during the relevant period, it was alleged that they have sent misleading signals to the market through misreporting of such price sensitive information. The Noticee, being a promoter of ASL during the relevant time, was also alleged to have misled the investors by intimating wrong details about the shareholding which were to be reported by ASL to BSE.

16. With respect to this allegation, the Noticee's primary submission is that it had sold 25,95,000 shares of ASL to Mahesh Kothari Share and Stock Brokers Private Limited on June 04, 2007 and that any false representation of shareholding by the directors or promoters of ASL, as alleged, is not binding on it. I note that the SCN has mentioned that the Noticee made the disclosures on the basis of the information furnished by its promoter-shareholders. In support of the aforesaid submission, the Noticee had submitted the following documents vide reply dated November 06, 2012 :

- (i) Letter dated October 10, 2012 addressed by the Noticee to Mahesh Kothari Share and Stock Brokers Private Limited with the subject line "Confirmation of Accounts 01-Apr-2007 to 31-Mar-2008". The said document is filed purportedly to show that 25,95,000 equity shares of ASL were sold by the Noticee at the rate of ₹ 2/- per share and that the purchaser has tendered a cheque for the amount of ₹ 51,90,000/- drawn on IndusInd Bank Limited.
- (ii) Letter dated October 22, 2012 from Union Bank of India to the Noticee stating that the IndusInd would revert soon as the records are retrieved.
- (iii) Copy of the letter dated October 20, 2012 from IndusInd Bank Limited to Union Bank of India stating that they would revert as soon as the records are retrieved.
- (iv) Copy of the 13th Annual Report of the Noticee, wherein reference was made to the "*Schedules Forming Part of the Balance Sheet for the Year Ended 31st March 2008*", wherein it

was shown as at March 31, 2007, that the Noticee had 25,95,000 shares for value ₹ 51,90,000/- and that as at March 31, 2008, the Noticee did not have shares of ASL.

17. I have perused the aforesaid documents submitted by the Noticee and find that it has not submitted any primary evidence to prove that the shares of ASL held by it were actually sold on June 04, 2007. The Noticee has produced only a letter to show that itself and the so claimed purchaser have acknowledged the purchase and sale and the transfer and receipt of the sale consideration. I find that Noticee has also not furnished copies of share transfer deeds (*shares held by the Noticee were in physical mode*). Further, the annual report of the Noticee, though mentions that Noticee did not have shares of ASL as on March 31, 2008, has not been certified to be a true copy. The Noticee has also not furnished material to show that it had provided correct information regarding its shareholding to ASL. Since the Noticee failed to produce material evidence to show that it had off-loaded all its shareholding in ASL as of June 2007, I am constrained to take an adverse inference that the Noticee continued to remain a shareholder in the '*promoter and promoter group*' category of ASL till June 2008 and that its shareholding was misrepresented in the disclosures made to the BSE, as mentioned above. I also note that SEBI has taken action (*Adjudication proceedings*) against ASL and its directors with respect to the allegation of making false and misleading disclosures regarding the shareholding pattern of ASL during the relevant period. The said proceedings culminated in the imposition of monetary penalties on them.

18. I also note that the Interim Order had restrained the Noticee from accessing the securities market and prohibited it from buying, selling or dealing in securities in any manner whatsoever, until further orders. The said direction was confirmed vide the Confirmatory Order. Therefore, I am of the considered view that no further action is called for against the Noticee in the matter and the direction issued against the Noticee vide the Interim and Confirmatory Orders needs be revoked. I also note that the instant proceeding against the Noticee was prolonged on account of non-receipt of the SCN by the Noticee and it appeared before me only pursuant to a newspaper notice, as explained in the earlier paragraphs of this Order.

19. In view of the foregoing, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11(4) and 11B thereof and regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, hereby dispose off the show cause notice dated September 06, 2010 issued to Mayuresh Real Estate & Management Private Limited in the matter of Alka Securities Limited without any further directions. Further, the restraint imposed on the Noticee vide SEBI Orders dated July 28, 2009 and October 16, 2009 in the matter is vacated with immediate effect.

20. Copies of this Order shall be forwarded to all recognized stock exchanges and depositories for due compliance with the direction above.

Date : January 22nd, 2013
Place: Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA