BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[**ADJUDICATION ORDER NO. Order/BM/RK/2024-25/ 30772-30780]**

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Noticee No.	Name of Noticees	PAN
1	Ashok R Panchariya	AEVPP6124P
2	Satish R Panchariya	ADRPP1806H
3	Arun Ramswaroopji Panchariya	AEVPP6125N
4	Shantadevi R Panchariya	AQNPP3367Q
5	Radhadevi S Panchariya	AHWPP6235D
6	Ramswaroop B Panchariya	AQNPR3366R
7	Madhudevi Panchariya	AHWPP8962H
8	Saritadevi Panchariya	AHWPP6223H
9	Cavalier Securities Ltd	AAACC6370Q

In the matter of **"Alka India Limited"**

BACKGROUND

1. Securities and Exchange Board of India ("**SEBI**") conducted an examination in the matter of Alka India Limited (hereinafter referred to as the "**Alka/Company**"), a company listed on Bombay Stock Exchange Limited ("**BSE**").The examination was to ascertain whether there was any violation of the provisions of SEBI Act, 1992 (hereinafter referred to as the "**SEBI Act**"), SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015, (hereinafter referred to as the "**LODR Regulations**"), SEBI (Substantial Acquisition Of Shares And Takeovers) Regulations, 1997 (hereinafter referred to as **"SAST Regulations"**) and Clauses of the Listing Agreement by Company, Mr Ashok R Panchariya (Noticee 1), Mr Satish R Panchariya (Noticee 2), Mr Arun Ramswaroopji Panchariya (Noticee 3), Ms Shantadevi R Panchariya (Noticee 4), Ms Radhadevi S Panchariya (Noticee 5), Mr Ramswaroop B Panchariya (Noticee 6), Ms Madhudevi Panchariya (Noticee 7), Ms Saritadevi Panchariya (Noticee 8) and Cavalier Securities Ltd (Noticee 9) (hereinafter Noticee 1-9 are together referred to as the **Noticees**). During the examination, it was observed that the company had allegedly filed incorrect shareholding pattern and also failed to ensure 100% shareholding of its promoters in demat form and Noticee 1-9 had allegedly failed to make open offer.

2. SEBI had therefore initiated adjudication proceedings against the company including the Noticees to inquire into and adjudge the alleged violations of the provisions of SEBI Act, LODR Regulations and SAST Regulations as tabulated in table 1 below and to impose penalties under Section 23A(a) of the Securities Contract Regulation Act, 1956 (hereinafter referred to as **"SCRA**") and Sections

15A(b) and 15HB of the SEBI Act upon company and Section 15H(ii) of the SEBI Act upon Noticees:

Table 1:

Sr. No.	Alleged Violations by (Noticees/Company)	Regulatory provisions
1.	Company	Clause 35 of Listing Agreement and Regulation 31(1) of SEBI (LODR) Regulation, 2015 and Regulation 31(4) r/w 4(1)(e) of SEBI (LODR) Regulation, 2015 and Regulation 31(2) r/w Regulation 4(1)(e) of SEBI LODR Regulations.
2.	Noticee 1-9	Section 12A(f) of SEBI Act, 1992 r/w Reg. 10 r/w Reg. 14(1) of SAST Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. In this regard, SEBI appointed the undersigned as the Adjudicating Officer **("AO")** vide order dated January 10, 2024, communicated vide communique dated February 14, 2024 under Section 15-I of the SEBI, 1992 (hereinafter referred to as **"SEBI Act"**) read with Rule 3 of the SEBI (Procedure for Holding Inquire and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"SEBI Adjudication Rules**") and Section 23-I of the Securities Contract Regulation Act,1956 (hereinafter referred to as **"SCRA**") read with Rule 3 of the Securities Contract (Regulation) (Procedure for Holding Inquire and Imposing Penalties) Rules, 2005 (hereinafter referred to as the "**SCRR**") to inquire into and adjudge under Sections 15HB, 15H(ii) and 15A(b) of the SEBI Act and Section 23A(a) of the SCRA for the alleged violations by company and the Noticees, as applicable for the aforesaid alleged violations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice dated February 29, 2024 (hereinafter referred to as ***SCN***) was issued to the Noticees including the company in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI Adjudication Rules and Section 23-I of the SCRA read with Rule 4 of the SCRR to show cause as to why an inquiry should not be held against them and penalty, if any, be not imposed upon the company & the Noticees under the following Sections of SEBI Act and SCRA:

   a) Section 23A(a) of the SCRA, Sections 15A(b) & 15HB of the SEBI Act on the company for the violation of Clause 35 of Listing Agreement and Regulation 31(1) of SEBI (LODR) Regulation, 2015 and Regulation 31(4) r/w 4(1)(e) of SEBI (LODR) Regulation, 2015 and Regulation 31(2) r/w Regulation 4(1)(e) of SEBI LODR Regulations, and
   b) Section 15H(ii) of the SEBI Act upon the Noticees for the violation of Section 12A(f) of SEBI Act, 1992 r/w Reg. 10 r/w Reg. 14(1) of SAST Regulations.

5. The said SCN was attempted to be served upon the Company & Noticees via SPAD, which returned undelivered with a remark "*Left*". However, delivery through digitally signed email was possible in respect of Noticee 1,2,3,4, 5,6,7 and 8 and the proof of service w.r.t delivery of SCNs and hearing Notices is on record. In respect of Noticee 9, the SCN was served upon it through public Notice on June 12, 2024 in three newspapers, namely, The Times of India (English), Gujarat Vaibhav (Hindi) and Sandesh (Gujarati) in Ahmedabad Edition/Circulation. The details of mode of delivery of the SCN and the hearing notice are mentioned in the table 2 below:

Table 2:

Names of the Noticees	SCN Delivered (Y/N)(MODE)	Reply Received Y/N	Hearing Notice Date	HN Delivered (Mode of Service)	Hearing Date	Hearing Attended(Y/N)
Ashok R Panchariya	Y, Email	Y	June 20, 2024 and July 29, 2024	Email	July 11, 2024 and August 12, 2024	Y
Satish R Panchariya	Y, Email	Y	June 20, 2024 and July 29, 2024	Email	July 11, 2024 and August 12, 2024	Y
Arun Ramswaroopji Panchariya	Y, Email	Y	June 20, 2024 and August 13, 2024	Email	July 11, 2024 and September 03, 2024	Y
Shantadevi R Panchariya	Y, Email	Y	NA*	NA*	NA*	NA*
Radhadevi S Panchariya	Y, Email	Y	June 20, 2024 and July 29, 2024	Email	July 11, 2024 and August 12, 2024	Y
Ramswaroop B Panchariya	Y, Email	Y	NA*	NA*	NA*	NA*
Madhudevi Panchariya	Y, Email	Y	June 20, 2024 and July 29, 2024	Email	July 11, 2024 and August 12, 2024	Y

Names of the Noticees	SCN Delivered (Y/N)(MODE)	Reply Received Y/N	Hearing Notice Date	HN Delivered (Mode of Service)	Hearing Date	Hearing Attended(Y/N)
Saritadevi Panchariya	Y, Email	Y	June 20, 2024 and August 13, 2024	Email	July 11, 2024 and September 03, 2024	Y
Cavalier Securities Ltd	Newspaper Publication	N	June 06, 2024	Newspaper Publication	June 26, 2024	N

**Noticee 4 and 6 are deceased as per the material available on record.*

6. SCN dated February 29, 2024 was also delivered to the company. In response to the SCN, Resolution Professional (RP) of the company vide email dated March 13, 2024 apprised that a moratorium has been imposed upon the company vide NCLT Mumbai Bench order dated December 18, 2023. In the absence of any reply to the SCN from the Noticees, a reminder email dated April 15, 2024 was sent to the email IDs of the Noticees available on record. Subsequently, Noticee 1, 2, 5 and 7 vide their letters dated April 12, 2024, received through email dated April 15, 2024 and AR of Noticee 3 and 8 vide email dated April 15, 2024 sought inspection of documents relevant and relied upon in the matter and supply of complete documents corresponding to the allegations/averments along with a request to grant extension of time to file reply in the matter respectively. Accordingly, vide email dated April 19, 2024, the Authorized Representative (AR) of the Noticee 1, 2, 5 and 7 was granted an opportunity to inspect the copies of documents on April 19, 2024, which was duly availed by their AR. Further, all the relevant and relied upon

documents were provided to the AR and the Noticee 3 vide email dated April 22, 2024 along with an advise to file reply to the SCN latest by May 22, 2024. Pursuant to conclusion of inspection, vide email dated April 24, 2024 Noticee 1, 2, 5 and 7 were advised to submit reply to the SCN latest by May 01, 2024. Noticee 1, 2, 5 and 7 vide their letters dated April 30, 2024 intimated that they would file settlement application in the matter in terms of (Settlement Proceedings), Regulation 2018 and requested to be granted more time to file reply in the matter. Vide email dated May 06, 2024, Noticee 1, 2, 5 and 7 were advised to file reply latest by May 16, 2024. Again vide email dated May 06, 2024, May 13, 2024 and May 21, 2024, AR of Noticee 1, 2, 5 and 7 and Noticee 3 and 8 sought additional time to file reply in the matter respectively. Accordingly, vide email dated May 14, 2024 and May 22, 2024, the ARs of Noticee 1, 2, 5 and 7 and Noticee 3 and 8 were advised to submit reply to the SCN latest by June 11, 2024 and June 05, 2024 respectively. In response, Noticee 1 and AR of the Noticee 2, 5 and 7 submitted reply to the SCN and also provided with the death certificate of the Noticee 4 and 6 vide emails dated June 11, 2024. A reminder email dated June 06, 2024 was sent to the AR of the Noticee 3 and 8 to reply to the SCN latest by June 10, 2024 in the absence of any reply from them. In response, AR of the Noticee 3 and 8 vide email dated June 11, 2024 submitted their reply to the SCN. Further, it is observed that Noticee 1, 2, 5 and 7 failed to apply for Settlement application within the stipulated timeframe.

7. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, Noticee 1, 2, 3, 5, 7 and 8 were provided with an opportunity of personal hearing on July 11, 2024 vide hearing Notice dated June 20, 2024 as detailed in table 1 above. Vide email dated July 10, 2024, Noticee 1 and

AR of the Noticee 2, 5 and 7 sought adjournment of hearing. Accordingly, vide email dated July 29, 2024, the said hearing was rescheduled to August 12, 2024. AR of the Noticee 3 and 8 telephonically confirmed that he would place adjournment request for rescheduling the said hearing. In the absence of any such request from the AR/ Noticee 3 or Noticee 8, an email dated July 30, 2024 was sent to the AR of the Noticee 3 and 8 to confirm whether they would like to avail an opportunity of hearing in the matter. AR of the Noticee 3 and 8 vide email dated July 30, 2024 confirmed to avail the said opportunity and accordingly, vide email dated August 13, 2024, a final opportunity of hearing in the matter was granted to the Noticee 3 and 8 on September 03, 2024.

8. In respect of Noticee 1 and Noticee 2, 5 and 7, the said hearing was attended to by their respective ARs wherein they reiterated the submissions made earlier vide their letters dated June 11, 2024 and were advised to make additional submissions by August 13, 2024 and August 20, 2024 respectively. Vide email dated August 12, 2024, AR of the Noticee 2, 5 and 7 submitted a copy of SAT judgement relied upon by him during the course of hearing and AR of the Noticee 1 sought more time to submit copy of the Board Resolution filed from the period January 01, 2004 to June 01, 2004 and copy of list of Directors including executive and non-executive for the period from November 01, 2004 to April 20, 2005, which was sought during the course of hearing. Accordingly, the said request was acceded to and Noticee 1 was advised to submit the same latest by August 31, 2024. In response, Noticee 1 vide email dated September 03, 2024, September 09, 2024 and September 10, 2024 made additional submissions in the matter and no documents were submitted. Similarly, in respect of Noticee 3 and 8, the said hearing was attended to by their

AR wherein he reiterated the submissions made vide letter dated June 11, 2024 and sought time to make additional submissions in the matter, which was accordingly granted. AR of the Noticee 3 and 8 made additional submissions vide email dated September 05, 2024. Further, Noticee 9 was granted an opportunity of personal hearing on June 26, 2024 through the aforementioned public Notice along with an opportunity for submitting its reply to the SCN.

9. SCN and hearing Notices were duly served upon the Noticee 9 and sufficient opportunities were also granted to it to reply to the SCN and appear for the hearing. However, the Noticee 9 has failed to reply and avail the opportunity of personal hearing. Hence, the undersigned is of the view that principles of natural justice have been duly complied with. Noting that no prejudice has been caused to it and that the principles of natural justice has been duly followed in the matter, the undersigned is therefore, inclined to take a view that Noticee 9 has nothing to submit in its contention in the matter and in terms of Rule 4(7) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, the proceedings in respect of the Noticee 9 shall be conducted ex-parte taking into account material, facts and materials available on record.

10. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Classic Credit Ltd. vs. SEBI** (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, observed that, "......*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them"*.

11. Further, the Hon'ble SAT in the matter of **Sanjay Kumar Tayal & Others vs SEBI** (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed *that: "........... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*

12. Additionally, the same position was reiterated by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Dave Harihar Kirtibhai vs SEBI** (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under:

"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...".

13. In view of the observations made by the Hon'ble SAT, the undersigned finds no reason to take a different view and accordingly, deems it appropriate to proceed against the Noticee 9 ex-parte, based on the material available on record and in absence of response of the Noticee 9, presume that the allegations/charges have been admitted by it.

14. The Death Certificate in respect of Noticee 4 and 6 provided by their AR, was issued by the Amdavad Municipal Corporation, Gujarat and shows that the Noticee 4 and 6 had passed away on January 18, 2015 and April 09, 2014 respectively. The death certificate was verified from the website of aforesaid Municipal Corporation and the same is also on record. Thus, the proceedings are against the acts of omission and commission of a person who is no more to face the charges. In this regard, it is worth mentioning that in ***Girijanandini Vs Bijendra Narain (AIR 1967 SC 2110)***, the Hon'ble Supreme Court held that in case of personal actions, i.e., the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim actio personalis moritur cum persona (personal action dies with the death of the person) would apply. It is also relevant to refer to the decision of Hon'ble Securities Appellate Tribunal in ***Chandravadan J. Dalal vs. SEBI (Appeal No. 35/2004 decided on June 15, 2005)***, wherein it was held that: *"The appeal abates since the appellant during the pendency of the appeal died on 29th November 2004. The appeal accordingly abates."*

15. In view of the foregoing, the undersigned is of the view that the present proceedings initiated against the Noticee 4 and 6 will not survive and is liable to be abated without going into the merits of the case qua them.

16. The SCN dated February 29, 2024 issued in respect of the Noticee 4 and 6 is disposed of accordingly.

17. The submissions made by the Noticee 1, 2, 3, 5, 7 and 8 vide their reply dated June 11, 2024, August 12, 2024, September 03 and 05, 2024 and September 09, and 10, 2024 are mentioned here under:

Submissions by Noticee 1:

17.1 Noticee 1 submitted that he and Noticee 9 were never a part of promoter group and have not acted together with Alka or its promoters, for the purposes of the subject transaction or any other transaction(s). Therefore, it is incorrect on part of SEBI to consider Noticee 9 a promoter group entity and / or a person acting in concert, so as to warrant any kind of adverse order of penalty against him.

17.2 Noticee 1 submitted that there is a delay in initiation of the present proceeding and same has caused enormous prejudice to him. This unconscionable and unexplained delay in issuing the present SCN goes to the root of the matter and is completely in violation principles of natural justice.

17.3 He submitted that after a lapse of more than 20 years from the date of the event in question and / or alleged violation, the SCN ought not have been issued. Therefore, the proceedings are liable to be dropped on this ground alone.

17.4 He denied having acted along with other Noticees in the year 2004 and an open offer had been triggered in the year 2004 and he along with other Noticees have violated Regulation 10 r/w Regulation 14 of the SAST Regulations.

17.5 He further submitted that he was not a Director or a promoter of Alka during the relevant period and got associated with it as a Director only on April 29, 2005 and that he was not involved in its day-to-day affairs.

17.6 Noticee 1 submitted that since he was not associated with Alka at the relevant time, he was not part of the decision taken by Alka to issue NCRPS in the year 2004.

17.7 He further submitted that during the relevant period, he was a non-executive Director of Noticee 9 and was not its promoter. However, had no role in the day to day affairs of the Noticee 9. He submitted that he got associated with Noticee 9 only in the year 2000.

17.8 He submitted that the Alka was incorporated in the year 1994 and it was not promoted by him.

17.9 He submitted that Noticee 9 was/is not an entity promoted by Alka or any of its promoter or promoter group entity/ies or was not a subsidiary or a holding company of Alka or is not promoted by any of the Noticees. Therefore, also merely because he been a director of Noticee 9, cannot be the reason for SEBI to consider Noticee 9 as a promoter group entity of Alka.

17.10 He further submitted that he was made a nominee against the NCRPS issued by Alka to Noticee 9 for the reason that Noticee 9 been at the relevant time a registered trading member with Ahmedabad Stock Exchange (ASE), therefore it was decided by Noticee 9 to make him a nominee and he was asked to hold the shares on behalf of Noticee 9. On the basis of such understanding it cannot be said that he was in control of the said shares. He never had any right / interest or beneficial ownership in the said shares.

17.11 It is a matter of record that he was never a beneficiary of the subject NCRPS / equity shares issued to Noticee 9 and the Noticee 9 was the sole beneficiary and it is Noticee 9's executive directors and persons in charge / control who were the decision makers with respect to the subject shares right from the date of allotment and he had no control over Noticee 9 or decision making of Noticee 9. Therefore, merely because he was a director and held shares on behalf of Noticee 9, same cannot be the reason to include Noticee 9 and its shareholding in Alka under the promoter category

17.12 Noticee 1 submitted that he had also issued specific declaration as required under section 187C of the Companies Act, whereby he had specifically declared that he was not a beneficial owner of the shares issued to Noticee 9 and declaration was filed by the Noticee with the ROC and Stock Exchanges.

17.13 Noticee 1 further submitted that for the Noticee 9 to become a promoter or a promoter group entity, it ought to have acted together with company, which was never the case. There is nothing to allege that there was a common understanding between Noticee 9 and Alka. Merely because Noticee 9 also converted NCRPS into shares cannot be the reason to assume that they had a common understanding and were acting together.

17.14 It is relevant to note that it is not that apart from Noticee 2 to 9 there were no other allottees of NCRPS of the subject allotment which took place on March 31, 2004. It is a matter of record that NCRPS were allotted to other public shareholders as well apart from Noticee 9. This itself shows that there was no meeting of minds or common motive while making the subject allotments and subject conversions of NCRPS into Equity shares.

17.15 Noticee 1 submitted that even at the relevant time the Alka had always correctly shown Noticee 9 under the public shareholders category and not under the promoter category.

17.16 He further submitted that he could not be considered as a Person Acting in Concert ("PAC") with the other Noticees under the Takeover Regulations, since he was never a beneficiary of the NCRPS / shares issued to Noticee 9 and is a trite law that for a person to be considered as PAC, it should be shown that there was a meeting of minds and a common objective for the purposes of the subject transactions. In any event, the subject shares were not allotted to him and it was allotted to Noticee 9.

17.17 He had not made any gains or gained any unfair advantage out of the subject transactions and also no harm or loss or prejudice has been caused to any investor.

Common Replies of Noticee 1, 2, 3, 5, 7 and 8

17.18 *Noticee 1, 2, 3, 5, 7 and 8 submitted that they and Noticee 9 were never a part of promoter group and have not acted together with Alka or its promoters, for the purposes of the subject transaction or any other transaction(s). Therefore, it is incorrect on part of SEBI to consider Noticee 9 a promoter group entity and / or a person acting in concert, so as to warrant any kind of adverse order of penalty against them.*

17.19 *They submitted that there is a delay in initiation of the present proceeding and same has caused enormous prejudice to him. This unconscionable and unexplained delay in issuing the present SCN goes to the root of the matter and is completely in violation principles of natural justice.*

17.20 *They submitted that after a lapse of more than 20 years from the date of the event in question and / or alleged violation, the SCN ought not have been issued. Therefore, the proceedings are liable to be dropped on this ground alone.*

17.21 *They denied having acted along with other Noticees in the year 2004 and an open offer had been triggered in the year 2004 and he along with other Noticees have violated Regulation 10 r/w Regulation 14 of the SAST Regulations.*

17.22 *They further submitted that Noticee 1 was not a Director or a promoter of Alka during the relevant period and got associated with it as a Director only in 2005.*

17.23 *They submitted that they were was not associated with Alka at the relevant time and were not part of the decision taken by Alka to issue NCRPS in the year 2004.*

17.24 *They submitted that Noticee 9 was/is not an entity promoted by Alka or any of its promoter or promoter group entity/ies or was not a subsidiary or a holding company of Alka or is not promoted by any of the Noticees. Therefore, also merely because Noticee 1 been a director of Noticee 9, cannot be the reason for SEBI to consider Noticee 9 as a promoter group entity of Alka.*

17.25 *They further submitted that for the Noticee 9 to become a promoter or a promoter group entity, it ought to have acted together with company, which was never the case. There is nothing to allege that there was a common understanding between Noticee 9 and Alka. Merely because Noticee 9 also converted NCRPS into shares cannot be the reason to assume that they had a common understanding and were acting together.*

17.26 *It is relevant to note that it is not that apart from Noticee 2 to 9 there were no other allottees of NCRPS of the subject allotment which took place on March 31, 2004. It is a matter of record that NCRPS were allotted to other public shareholders as well apart from Noticee 9. This itself shows that there was no meeting of minds or common motive while making the subject allotments and subject conversions of NCRPS into Equity shares.*

17.27 They submitted that even at the relevant time the Alka had always correctly shown Noticee 9 under the public shareholder category and not under the promoter category.

17.28 They further submitted that they could not be considered as a Person Acting in Concert ("PAC") with the other Noticees under the Takeover Regulations, since he was never a beneficiary of the NCRPS / shares issued to Noticee 9 and is a trite law that for a person to be considered as PAC, it should be shown that there was a meeting of minds and a common objective for the purposes of the subject transactions. In any event, the subject shares were not allotted to them and it was allotted to Noticee 9.

17.29 That the SCN proceeds on the premise of violation of SEB! LODR, Regulations of 2015. However, there are allegations levelled with respect to some transactions of 2004. In this regard, it is submitted that SEBI (LODR) Regulations 2015 cannot be applied retrospectively and this action is clearly barred as the SEBI (LODR Regulations) came into effect in 2015, whereas, disputed period is of 2004. Therefore, punishment of penalty cannot be applied retrospectively for any transaction which was allegedly conducted in the year 2004 as the LODR Regulations were not in force at that point of time. Since, the proposed actions are in the form of penalties, hence, the protection against ex-post facto laws will be applicable in the present case.

17.30 That it has been held by the Hon'ble Supreme Court of India as well as Hon'ble Securities Appellate Tribunal, Mumbai and various Hon'ble High Courts of the country in plethora of judgments that penal provisions giving retrospective effect are violative of the Constitution of India. It is well established principle of law that no Act or omission on the part of any personal shall be punishable as an offence or penalty which would not have been so punishable, if the concerned provisions had not come into force. Accordingly, LODR Regulations of 2015 cannot be given a retrospective effect.

17.31 That the Hon'ble High Court of Bombay had taken note of the atrocities of the SEBI as well as Stock Exchanges in exploiting the process of law by wrongly slapping the penalties on the Promoters under SEBI (LODR) Regulations. It has been held in the judgment of "Pradeep Mehta Vs. Union of India" passed in CWP No.1590 of 2021 on 26.08.2024 that alleged default by the company or its Directors for non-compliance of SEBI (LODR) Regulations has been taken against the initial Promoters only for the reason that when such company was formed in the year 1989, the petitioner therein was one of the Promoters of the company and the impugned action was taken after about 29 years of the said petitioner being declared to be Promoter. It was held by the Hon'ble Bombay High Court that mere fact that the petitioner therein was a Promoter at the time when the company was incorporated, the Promoters who are not the Directors would not have any association subsequent to the formation of the company. It was held that Promoters who are not the Directors of the company or never involved with the company in any other capacity in managing the affairs of the company, that such a default in complying with any Regulations can never be attributable to the Promoters and such an Act would be ex-facie, illegal, unjust and completely arbitrary. The said judgment is squarely applicable to *the case of notices for the simple reason that the listing obligations and disclosure requirements are to be complied with by the company*

17.32 That they had not made any gains or gained any unfair advantage out of the subject transactions and also no harm or loss or prejudice has been caused to any investor.

Common Replies of Noticee 3 and 8

17.33 Noticee 3 and 8 submitted that SCN clearly reveals that there is no allegation or observation against them which could reveal any violation by them.

17.34 That it is not discernible as to how and in what manner and what role has been attributed to them due to which they are even helpless to respond to the SCN in an appropriate and effective manner. Since there is no allegation against them, therefore, the proceedings arising out of the SCN are liable to be dropped forthwith.

17.35 That there is no allegation that alleged preferential shares of Noticee 9 were held in the name of Noticee 3 and 8 at any point of time. The main allegations are against the company, Noticee 1 and Noticee 9. Neither, any role has been ascribed to the Noticee 3 and 8 nor there is any specific allegation having been levelled in the SCN and as such, even the issuance of the SCN is void-ab-initio.

17.36 That there is no allegation with regard to the fact that Noticee 3 or 8 had directly or indirectly offloaded shares of AIL in the market and took the advantage of the AIL. There is also no allegation that Noticee 9 had ever added or abetted Noticee 3 and 8 or they had ever abetted or added Noticee 9.

17.37 That the Noticee 3 is already barred and prohibited from dealing in the securities market ever since September 21, 2011 and from holding any Directorship or KMP position in any listed company or hold any Demat Account. Therefore, there is no question of any dealing in any share either by the Noticee 3 or Noticee 8.

17.38 That in SCN it has been alleged that there was requirement of open offer by Promoter of ALka, however, no open offer has been made till date. This allegation falls to the ground for the simple reason that the Noticee 3 is already banned and prohibited by the SEBI itself, therefore, there is no question of open offer at the behest of Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

18. As observed, the company is currently under Corporate Insolvency Resolution Process (CIRP) w.e.f December 18, 2023 pursuant to an Order of the Hon'ble National Company Law Tribunal ("NCLT"). Further, it is noted that NCLT vide its

aforementioned Order had also declared moratorium under Section 14 of IBC in respect of the company. The relevant extracts of the aforementioned order of NCLT is reproduced hereunder:

***"23.** Accordingly, the Company Petition bearing no. 972 of 2023 is admitted and ordered as follows:*

ORDER

i) The above Company Petition No. (IB) 972 (MB)/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Alka India Limited.

ii) The Petitioner has proposed the name of Mr. Dharmendra Dhelariya, Registration No. IBBI/IPA-001/IP-00251/2017- 2018/10480), to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 12.09.2023 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA dated 01.03.2023. Accordingly, we appoint Mr. Dharmendra Dhelariya (dhelariya@gmail.com) as the Interim Resolution Professional (IRP) to carry out the functions as per the Insolvency & Bankruptcy Code, 2016…………

……..

…….

…….

iv) There shall be a moratorium under section 14 of the Code prohibiting the following:

a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor."

19. In view of the above, the proceedings against Alka/Company are kept in abeyance.

20. The undersigned has carefully perused the submissions made by the Noticee 1, 2, 3, 5, 7 and 8 and documents available on record, and the issues that arise for consideration in the present case are:

Issue No. I: Whether Noticee 1, 2, 3, 5, 7, 8 and 9 are in violation of the provisions of SEBI Act and SAST Regulations as mentioned in table 1 above?

Issue No. II: If yes, does the violation, on the part of the Noticee 1, 2, 3, 5, 7, 8 and 9 would attract monetary penalty under Section 15H(ii) of the SEBI Act as applicable?

Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticee 1, 2, 3, 5, 7, 8 and 9 taking into consideration the factors stipulated in Section 15J of the SEBI Act?

21. Before the undersigned proceeds further with the matter, it is pertinent to mention the relevant provisions of the SEBI Act and SAST Regulations alleged to have been violated by the Noticees. The same are reproduced below:

SEBI Act, 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(f) *acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.*

SEBI (SAST) Regulations, 1997

Acquisition of [fifteen] or more of the shares or voting rights of any company

10. *No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen percent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations.*

Timing of the Public Announcement of Offer

14. (1) *The public announcement referred to in Regulation10 or Regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein:*

Provided that in case of disinvestment of a Public Sector Undertaking, the public announcement shall be made by the merchant banker not later than 4 working days of the acquirer executing the Share Purchase Agreement or Shareholders Agreement with the Central Government or the State Government as the case may be for the *acquisition of shares or voting rights exceeding the percentage of shareholding referred to in Regulation 10 or Regulation11 or the transfer of control over a target Public Sector Undertaking.*

SEBI (LODR) Regulations, 2015

Principles governing disclosures and obligations

4. (1) *The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:*

(e) *The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.*

Holding of specified securities and shareholding pattern

31. (1) *The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to time within the following timelines –*

(a) *one day prior to listing of its securities on the stock exchange(s);*

(b) *on a quarterly basis, within twenty-one days from the end of each quarter; and,*

(c) *within ten days of any capital restructuring of the listed entity resulting in a change exceeding two per cent of the total paid-up share capital: Provided that in case of listed entities which have listed their specified securities on SME Exchange, the above statements shall be submitted on a half yearly basis within twenty-one days from the end of each half year.*

(2) The listed entity shall ensure that hundred percent of shareholding of promoter(s) and promoter group is in dematerialized form and the same is maintained on a continuous basis in the manner as specified by the Board.

(4) All entities falling under promoter and promoter group shall be disclosed separately in the shareholding pattern appearing on the website of all stock exchanges having nationwide trading terminals where the specified securities of the entity are listed, in accordance with the formats specified by the Board.]

Issue No. I: Whether Noticee 1, 2, 3, 5, 7, 8 and 9 are in violation of the provisions of SEBI Act and SAST Regulations as mentioned in table 1 above?

22. Before the undersigned proceeds to deal with the matter on merits, it would be instrumental to settle preliminary issue raised by the Noticee 1, 2, 3, 5, 7 and 8. The said Noticees in their reply submitted that there has been an inordinate delay of 20 years in the issuance of SCN, hence the SCN is completely in violation of the principles of natural justice.

23. With regard to the aforesaid contention of Noticee 1, 2, 3, 5, 7 and 8 that there is a delay in issuing the SCN, it is to be noted that, there is no provision under SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. In this regard, it is noted that SEBI initiated the examination in the matter as soon as it was in receipt of a complaint dated January 13, 2022 w.r.t non-allotment of shares of the company, which was post approval of the scheme of amalgamation of the company with Jenice Textiles Limited in the year 2005. It is also noted that the examination relating to this case is a time-consuming process, which may require detailed analysis of the case facts as the issue of Non-Convertible Redeemable Preference Shares (NCRPS) dates back to December 2003 and subsequent allotment of shares to the promoters and public shareholders in the month of March 31, 2004. Subsequently, pursuant to the completion of examination in December 29, 2023, Adjudicating Officer was appointed on January 10, 2024 and SCN was issued on February 29, 2024. Thus,

the undersigned notes that there was no delay in issuance of SCN as has been argued by Noticee 1, 2, 3, 5, 7 and 8.

24. In this regard, the undersigned would like to rely on the judgment of the Hon'ble SAT in the matter of ***Pooja Vinay Jain vs SEBI*** (Appeal No. 152 of 2019 decided on March 17, 2020) held that, "*The record would show that all the documents concerning the defence of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same".*

25. It is also noted that the Hon'ble SAT in the matter of ***Bipin R Vora vs SEBI***(decided on March 22, 2006) held that, *"As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market".*

26. In view of the above, and considering the facts and circumstances, the undersigned finds that the said contention of Noticee 1, 2, 3, 5, 7 and 8 in this regard is without merits.

Alleged Violation: Filing of Incorrect shareholding pattern, failure to ensure Promoters' shareholding in demat form & failure to make open offer

27. It is observed that the equity shareholders of the company vide resolution dated December 31, 2003 granted approval to the issues of 25,00,000 NCRPS of Rs.100 each to promoters and public shareholders. The NCRPS were allotted on March 31, 2004. Subsequently, Board of Directors of the company vide resolution dated May 01, 2004 changed the terms of NCRPS and made them optionally convertible into equity shares in the ratio of 1:100 of Rs 1 each. Thereafter, company issued 25,00,00,000 (25 crores) equity shares to promoters and public on June 30, 2004. It is observed that the company however, had not taken approval of equity shareholders for making NCRPS optionally convertible under Section 81(1A) of the Companies Act, 1956 and also did not obtain in-principal approval from BSE under Clause 24(a) of Listing Agreement owing to which, 25 Crore shares issued pursuant to conversion of NCRPS were not listed by the BSE.

28. Further, it is observed that in the Annual Report of company for FY 2013-14, it provided the detail of Notice of 21st AGM held on March 16, 2015 wherein one of the agenda item was on ratification of NCRPS conversion into equity shares done on June 30, 2004 and the shareholding of company pursuant to conversion of NCPRS disclosed in AGM Notice is as under in Table 3:

Table 3:

Sr. no.	Category	Pre Issue		Post Issue	
		No. of shares held	%	No. of shares held	%
1	Promoters	16,59,389	0.66	7,16,59,389	14.33
2	Public	24,83,40,611	99.32	42,82,93,611	85.67
	TOTAL	**25,00,00,000**	**100**	**50,00,00,000**	**100**

29. In this regard, BSE vide email dated July 11, 2022, *inter-alia*, informed SEBI that the company had issued 8,00,00,000 equity shares to the promoters of the Company on June 30, 2004 pursuant to the conversion of NCRPS. After the issuance, shareholding of promoters was increased from 0.66% to 16.33% of the paid up capital of the Company. This increase was beyond the threshold of 15% provided in Reg. 10 of SAST Regulations, which reads as mentioned below:

> *No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen percent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations.*

30. Further, BSE vide email dated December 02, 2022 provided a copy of document of the company containing details of equity shares allotted to entities pursuant to the conversion of NCRPS on June 30, 2004. Details of shares allotted to promoters is given in table 4 below:

Table 4:

Sl. No.	Name of Allottees promoters	Pre-issue holding		New Shares allotted	Post issue holding	
		No. of share	%		No. of shares	%
1.	Arun Panchariya	4,42,360	0.177	1,00,00,000	1,04,42,360	2.088

Sl. No.	Name of Allottees promoters	Pre-issue holding		New Shares allotted	Post issue holding	
		No. of share	%		No. of shares	%
2.	Shantadevi Panchariya	3,95,000	0.158	1,00,00,000	1,03,95,000	2.079
3.	Radhadevi Panchariya	47,000	0.019	1,00,00,000	1,00,47,000	2.009
4.	Ramswaroop Panchariya	1,44,000	0.058	1,00,00,000	1,01,44,000	2.029
5.	Madhudevi Panchariya	0	0	1,00,00,000	1,00,00,000	2.000
6.	Saritadevi Panchariya	0	0	1,00,00,000	1,00,00,000	2.000
7.	Satish Panchariya	1,17,029	0.047	1,00,00,000	1,01,17,029	2.023

31. It is further observed that on June 30, 2004, 1,00,00,000 (2.00%) shares were also issued to a public shareholder i.e. Noticee 9 and the said shares issued to it were held by the Noticee 1 on behalf of Noticee 9. In view of the same, Noticee 9 ought to have been shown under promoter category.

32. Further, it is observed that BSE had also informed that open offer trigger was observed by it at the time of considering the listing application of shares of company by its committee in 2014. As per the Minutes of Internal Listing Committee meeting held on July 01, 2014, BSE informed the representative of the company that shareholding of promoters had increased from 0.66% to 16.33% and hence open offer was triggered in terms of Reg. 10 of Takeover Regulations. In reply, representative of the company submitted the following (as per minutes):

"*Mr. Prashant Saran, Whole Time Member of SEBI in his order dated <u>September 29, 2009</u>*__*__ *at Para* 20 *inter-alia, recorded that shares allotted on conversion of NCRPS to Cavalier Securities P Ltd. were held by Mr. Ashok Panchariya on behalf of Cavalier Securities P Ltd. and since then, there is no communication from SEBI side in this regard. Therefore, were (the company) are of the view that according to SEBI there is no violations of SEBI(SAST) Regulations, 1997.*

33. With regard to the aforesaid submission by the company, it is observed that September 29, 2009 was hearing date and actual date of WTM order was February 25, 2010 wherein the SEBI WTM in paragraph 20 had noted following:

> *"I, however, note that the shares allotted on conversion of preference shares to Cavalier Securities Ltd were held in the name of Shri Ashok Panchariya on behalf of Cavalier Securities Ltd. All these facts indicate that all these major sellers in the market and entities involved in the off-market were connected to the promoters."*

34. With regard to the aforesaid, it is observed that SEBI Adjudicating Officer (AO) also passed an order dated October 29, 2010 against the Noticee 9 for violation of provision of PIT and PFUTP Regulations in the scrip of Alka during the period August 14, 2003 to March 26, 2004. In the said order, AO noted that Noticee 9 received 58,70,700 shares in off market transactions from the various promoters of the company during the month of May –June 2004. It was also mentioned as under:

> *a) Ashok Panchariya who was a Director of the Noticee was also one of the promoters of AIL. It can thus be said that the Noticee is also a promoter group company.*
>
> *b) In view* of *the forgoing, I am of the view that the Noticee had acted as a conduit* for *the* promoters/ *related entities/PACs in order to enable them to indirectly offload shares of AIL in market and take advantage of the misleading announcement made by AIL. Had the promoters/PACs themselves offloaded such substantial quantity of shares of AIL in the market, the same would have adversely impacted the price of the shares. Hence, I find that the Noticee had aided and abetted the promoters/its related entities/PACs in the aforesaid fraudulent act by transferring shares of AIL in off market to some of the front entities/ promoter related entities*

35. In view of the above, it is alleged that Noticee 9 was connected with the promoters of the company.

36. Further, BSE vide email dated January 05, 2023 informed that Noticee 9 was shown as public shareholder in the shareholding pattern for December 2018 and that it was not included under public category in March 2019 Share Holding Pattern (SHP) and that 1 Crore shares have been shown in the name of Noticee 1 under the second folio. Thus, holding of Noticee 1 was showing under two separate folio in March 2019 SHP. Further, in June 2019 revised SHP following was disclosed along with filing of SHP:

> *"There are two folios of Shri Ashok R Panchariya which was merged into one folio. So the total no. of promoters are 11 in the June quarter 2019 as compare to March quarter 2019 the total no. of promoter was 12".*

37. It is alleged that the above fact demonstrates common understanding between Noticee 9 and promoters of the company, hence they all have been person action in concert (PACs) for acquisition of shares on June 30, 2004. In this regard, the shareholding detail of promoters of Alka and their PAC (Noticee 9) pursuant to allotment of shares on conversion of NCRPS on June 30, 2004 is as under in Table 5:

TABLE 5:

Sr. no.	Category	Pre Issue (Total no. shares - 25 crore)		Post Issue (Total no. shares - 50 crore)	
		No. of shares held	%	No. of shares held	%
1	Promoters	16,59,389	0.66	7,16,59,389	14.33
2	Cavalier Securities Ltd. (PAC)	0	0	1,00,00,000	02.00
TOTAL		**16,59,389**	**0.66**	**8,16,59,389**	**16.33**

38. From the above, it is observed that the shareholding of promoters of company together with Noticee 9, increased from 0.66% to 16.33% pursuant to the allotment of equity shares on conversion of NCRPS on June 30, 2004. This required open

offer by promoters of company under Reg. 10 of Takeover Regulations, 1997, however, no open offer has been made till date.

39. It is further observed that as per December 2022 SHP, shareholding of promoters in company was 8,13,74,551(16.27%) while the number of equity shares held by promoters in demat form is 9,88,551(0.198%) only. Thus, almost entire shareholding is in physical form. In this regard, Regulation 31(2) of LODR Regulations reads as mentioned below:

> *"listed companies are required to ensure that hundred percent of promoters and promoter group is in dematerialized from and same is maintained on continuous basis…."*

40. Accordingly, in view of the above, it is alleged that

a) Company has violated Clause 35 of Listing Agreement and Regulation 31(1) of SEBI (LODR) Regulation, 2015 by filing incorrect shareholding pattern and Regulation 31(4) r/w 4(1)(e) of SEBI (LODR) Regulation, 2015 w.r.t filing in December 2018 SHP, which came into effect for SHP filed by listed companies from December 2018 onwards and mandated separate disclosure of promoters and promoter group due to disclosure of Noticee 9 as public shareholder and also violated Regulation 31(2) r/w Regulation 4(1)(e) of SEBI LODR Regulations by not ensuring 100% promoters' shareholding in demat from.

b) Noticee 1-9 have violated Section 12A(f) of SEBI Act, 1992 r/w Reg. 10 r/w Reg. 14(1) of SAST Regulations by not making open offer as detailed above.

41. Noticee 1 submitted that he and Noticee 9 were never a part of promoter group and have not acted together with Alka or its promoters, for the purposes of the subject transaction or any other transaction(s) and it is incorrect on part of SEBI to consider

Noticee 9 a promoter group entity and / or a person acting in concert. He further submitted that he was neiher a Director nor a promoter of Alka during the relevant period and got associated with it as a Director only on April 29, 2005 and he was not involved in its day-to-day affairs.

42. He further denied of having acted along with other Noticees in the year 2004 and submitted that no open offer had been triggered in the year 2004 and he along with other Noticees had not violated Regulation 10 r/w Regulation 14 of the SAST Regulations.

43. Noticee 1 further submitted that during the relevant period, he was a non-executive Director of Noticee 9 and was not a promoter of Noticee 9 and had no role in the day to day affairs of the Noticee 9 and he got associated with Noticee 9 only in the year 2000.

44. He further submitted that he was made a nominee against the NCRPS issued by Alka to Noticee 9 for the reason that Noticee 9 been at the relevant time a registered trading member with ASE, therefore it was decided by Noticee 9 to make him a nominee and he was asked to hold the shares on behalf of Noticee 9. On the basis of such understanding it cannot be said that he was in control of the said shares. He never had any right / interest or beneficial ownership in the said shares.

45. Noticee 1 submitted that he had also issued specific declaration as required under section 187C of the Companies Act, whereby he had specifically declared that he

was not a beneficial owner of the shares issued to Noticee 9 and declaration was filed by the Noticee with the ROC and Stock Exchanges.

46. During the time of hearing, Noticee 1 was advised to submit documentary evidence in support of having been nominated by board and a resolution thereof authorizing him to hold 1,00,00,000 shares on behalf of Noticee 9 and evidence to concrete its claim of being a non-Executive Director on the board of Noticee 9, however, no such documents were provided by the Noticee 1 stating that as informed by ROC vide letter dated September 02, 2024, the certified copies sought by him in the matter of M/s Cavalier Securities Limited were not available as per their records. Further, Noticee 1 was asked if he had filed an appeal against the AO order dated October 29, 2010. In this regard, it is observed that the Noticee 1 had not provided any explanation.

47. It is noted from the publically available record i.e. from the filing of Alka with BSE for the years 2001, 2002, 2003, 2004 and 2006 that the Noticee 1 was a promoter of Alka along with other promoters viz, Noticee 2, 3, 4, 5, 6, and 8 for the quarter ended on March 2001, June 2001, Sep 2001 and December 2001, Similarly, Noticee 1 continued to be promoter of Alka with Noticee 2, 3, 4, from March 2002 to quarter ending December 2003. Further, Noticee 5, 6, 7 and 8 are appearing in the promoter group along with the Noticee 1, 2, 3 and 4 from quarter ending in September 2004 to March 2006, which is in contradiction to the submission of all the Noticee 1, 2, 3, 5, 7 and 8 that they were not the promoters of Alka during the relevant period. It is also noted that during the course of hearing AR of Noticee 3 and 8 was advised to submit any documentary evidence in support of his claim that they were not

promoters of Alka. The AR made additional submission in the matter but remained silent w.r.t. the association of Noticee 3 and 8 with Alka as promoters. The aforesaid clearly shows that the Noticee 1, 2, 3, 5, 7 and 8 were the promoters of Alka during the allotment of NCRPS and also subsequent to conversion of NCRPS into equity shares on June 30, 2004 wherein the respective shareholding is given in table 6 below:

Table 6:

Name of Allottees promoters	Pre-issue holding		New Shares allotted	Post issue holding	
	No. of shares	%		No. of shares	%
Arun Panchariya	4,42,360	0.177	1,00,00,000	1,04,42,360	2.088
Shantadevi Panchariya	3,95,000	0.158	1,00,00,000	1,03,95,000	2.079
Radhadevi Panchariya	47,000	0.019	1,00,00,000	1,00,47,000	2.009
Ramswaroop Panchariya	1,44,000	0.058	1,00,00,000	1,01,44,000	2.029
Madhudevi Panchariya	0	0	1,00,00,000	1,00,00,000	2.000
Saritadevi Panchariya	0	0	1,00,00,000	1,00,00,000	2.000
Satish Panchariya	1,17,029	0.047	1,00,00,000	1,01,17,029	2.023
	TOTAL				**14.228**

48. From the table 6 above, it is noted that the shareholding of the promoters i.e. Noticee 2, 3, 4, 5, 6, 7 and 8 was 14.228%. Therefore, submission of the Noticee 1, 2, 3, 5, 7 and 8 that they were not promoters of Alka is bereft of merits.

49. Further, it is noted that BSE vide email dated January 05, 2023 informed that Noticee 9 was shown as public shareholder in the shareholding pattern for December 2018 and that it was not included under public category in March 2019 Share Holding Pattern (SHP) and that 1 Crore shares have been shown in the name of Noticee 1 under the second folio. Thus, holding of Noticee 1 was shown under two separate folio in March 2019 SHP. Further, in June 2019 revised SHP following was disclosed along with filing of SHP:

"There are two folios of Shri Ashok R Panchariya which was merged into one folio. So the total no. of promoters are 11 in the June quarter 2019 as compare to March quarter 2019 the total no. of promoter was 12".

50. From the above email of BSE and admission by Noticee 1, it is observed that he was holding shares on behalf of Noticee 9 and as already established above Noticee 1 was promoter of Alka. With respect to the claim of the Noticee1 that he was holding shares on behalf of Noticee 9, Noticee 1 failed to provide any documentary evidence to show that he was authorized to hold shares on behalf of Noticee 9, not a Director of the Noticee 9 and was also not one of the promoters of Alka. However, it is observed that Noticee 1 was allotted folio no. for holding shares on behalf of Noticee 9 (allotted to Noticee 9 on June 30, 2004) thus, he was the beneficial owner of the shares and his claim that he was not a beneficial owner does not deserve any merit. Thus, Noticee 9 was connected with the promoters of the company by virtue of him being the promoter of Alka and Noticee 1 himself holding shares on behalf of Noticee 9. It can thus be said that the Noticee 9 was also a promoter group company and ought to have been shown under the promoter category instead of Public shareholder by Alka, which was not shown by the company during the relevant period. Therefore, submission of the Noticee 1, 2, 3, 5, 7 and 8 that the company had correctly shown Noticee 9 under Public shareholder category is devoid of merits.

51. Noticee 1, 2 ,3 ,5, 7 and 8 have submitted that they could not be considered as a Person Acting in Concert ("PAC") with the other Noticees under the Takeover Regulations, since they were never a beneficiary of the NCRPS / shares issued to

Noticee 9 and for a person to be considered as PAC, it should be shown that there was a meeting of minds and a common objective for the purposes of the subject transactions.

52. It is observed that WTM in his order dated February 25, 2010 mentioned that "*the shares allotted on conversion of preference shares to Cavalier Securities Ltd were held in the name of Shri Ashok Panchariya on behalf of Cavalier Securities Ltd. All these facts indicate that all these major sellers in the market and entities involved in the off-market were connected to the promoters.*"

53. Further, SEBI Adjudicating officer in his order dated October 29, 2010 observed as follows:

> *a) Ashok Panchariya who was a Director of the Noticee was also one of the promoters of AIL. It can thus be said that the Noticee is also a promoter group company."*
>
> *b) In view* of *the forgoing, I am of the view that the Noticee had acted as a conduit* for *the* promoters*/ related entities/PACs in order to enable them to indirectly offload shares of AIL in market and take advantage of the misleading announcement made by AIL.* Had *the promoters/PACs themselves offloaded such substantial quantity of shares of AIL in the market, the same would have adversely impacted the price of the shares. Hence, I find that the Noticee had aided and abetted the promoters/its related entities/PACs in the aforesaid fraudulent act by transferring shares of AIL in off market to some of the front entities/ promoter related entities*

54. During hearing, Noticee 1 was enquired whether any appeal against the orders of WTM /AO was filed and the orders were set aside. However, Noticee 1 has failed to

provide any evidence in this regard. The above clearly brings out that Noticee 9 was one of the promoter group company and the other noticees who were also the promoters of the company, along with Noticee 9 were the PACs. It is also observed that Noticee 2 ,3 ,4, 5, 6, 7 and 8 who were the promoters were allotted shares at the same time. Thus it can be seen there was a common objective among the Promoters /PACs for the said transaction. In this regard, it is pertinent to refer to Regulation 2(1)(e) of SAST Regulations, 1997, which reads as under:

1) *persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal),directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company.*

2) *Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established:*

(i) *a company, its holding company, or subsidiary of such company or company under the same management either individually or together with each other;*

(ii) *a company with any of its directors, or any person entrusted with the management of the funds of the company;*

(iii) *directors of companies referred to in sub-clause(i) of clause (2) and their associates;*

(iv) *mutual fund with sponsor or trustee or asset management company;*

(v) *foreign institutional investors with sub account(s);*

(vi) *merchant bankers with their client(s) as acquirer;*

(vii) *portfolio managers with their client(s) as acquirer;*

(viii) *venture capital funds with sponsors;*

(ix) *banks with financial advisers, stock brokers of the acquirer, or any company which is a holding company, subsidiary or relative of the acquirer.*

Provided that sub-clause (ix)shall not apply to a bank whose sole relationship with the acquirer or with any company, which is a holding company or a subsidiary of the acquirer or with a relative of the acquirer, is by way of providing normal commercial banking services or such activities in connection with the offer such as confirming availability of funds, handling acceptances and other registration work.

(x) *any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2% of the paid-up capital of that company or with any other investment company in which such person or his associate holds not less than 2% of the paid up capital of the latter company.*

Note: For the purposes of this clause `associate' means:

(a) *any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and*

(b) *family trusts and Hindu Undivided Families.*

55. Therefore, in view of the above and in terms of Regulation 2(1)(e), it stands established that Noticee 1, 2, 3, 5, 6, 7, 8 and 9 were PACs and thus pursuant to conversion of NCRPS into equity shares, the percentage shareholding of the promoter group crossed the threshold level of 15 % i.e. from 0.66% to 16.33 % of the paid up capital of the company as already mentioned in table 5 above and the same warranted an open offer in terms of Regulations 10 of SAST Regulations. Therefore, submission of the Noticee 1, 2, 3, 4, 5, 7 and 8 that they were not PACs is not tenable.

56. Noticee 1, 2, 3, 5, 7 and 8 also submitted that the allegations levelled are with respect to some transactions of 2004 and LODR Regulations came into effect in 2015. Thus, the LODR Regulations cannot be applied retrospectively and this action is clearly barred. They further submitted that punishment of penalty cannot be applied retrospectively for any transaction which was allegedly conducted in the year 2004, hence, the protection against ex-post facto laws will be applicable in the

present case. In this regard, the undersigned notes that the Noticee 1, 2, 3, 5, 7 and 8 have misconstrued the alleged provisions in the SCN as the Noticee 1, 2, 3, 5, 7 and 8 were never alleged to be in violation of LODR Regulations rather allegation on the Noticee 1-9 was with respect to violation of Section 12A(f) of SEBI Act, 1992 r/w Reg. 10 r/w Reg. 14(1) of SAST Regulations and the company was alleged to being violation of Clause 35 of listing agreement prior to applicability of LODR Regulations and post that provisions of LODR Regulations, for wrongly showing the shareholding pattern. Therefore, the undersigned does not find any merit in submission of the Noticee 1, 2, 3, 5, 7 and 8.

57. Further, Noticee 1, 2, 3, 5, 7 and 8 placed reliance on the judgment of Bombay High Court in the matter of ***"Pradeep Mehta Vs. Union of India"*** passed in ***CWP No.1590 of 2021 on 26.08.2024*** wherein Noticee 3 and 8 submitted that the alleged default by the company or its Directors for non-compliance of SEBI (LODR) Regulations had been taken against the initial Promoters only for the reason that when such company was formed in the year 1989, the petitioner therein was one of the Promoters of the company and the impugned action was taken after about 29 years of the said petitioner being declared to be Promoter and it was held by the Hon'ble Bombay High Court that mere fact that the petitioner therein was a Promoter at the time when the company was incorporated, the Promoters who are not the Directors would not have any association subsequent to the formation of the company.

58. Noticee 1, 2, 4, 5, 7 and 8 further submitted that it was also held that Promoters who are not the Directors of the company or never involved with the company in any

other capacity in managing the affairs of the company, that such a default in complying with any Regulations can never be attributable to the Promoters and such an Act would be ex-facie, illegal, unjust and completely arbitrary. The said judgment is squarely applicable to the case of notices for the simple reason that the listing obligations and disclosure requirements are to be complied with by the company.

59. With regard to the aforementioned order of High court, the undersigned notes that the said order is not applicable to the Noticee 1, 2, 3, 5, 7 and 8 in the instant case as the facts and circumstances of the instant case are distinct and different from that of the said case. In the instant case, it is noted that all the promoters were the allottees of the NCRPS and were PACs as established above. As established, Noticee 1, 2, 3, 5, 7 and 8 were the promoters of the company and the cumulative shareholding of all the Noticees had crossed the threshold level of 15% and thus Noticee 1, 2, 3, 4, 5, 6, 7, 8 and 9 were required to make an open offer irrespective of the fact that whether they were Directors or not as the Regulation 10 of SAST Regulations stresses on Promoters to make an open offer rather than Directors. Therefore, submission of the Noticee 1, 2, 3, 5, 7 and 8 is devoid of merits.

60. Noticee 3 and 8 further submitted that Noticee 3 is already barred and prohibited from dealing in the securities market ever since September 21, 2011 and from holding any Directorship or KMP position in any listed company or hold any demat account and therefore, there is no question of any dealing in any share either by the Noticee 3 or Noticee 8 and thus, allegation on requirement of open offer by promoter of Alka, falls to the ground for the simple reason that he is already banned and prohibited by the SEBI itself. In this regard, the undersigned notes that as

established above the Noticee1-9 were required to make an open offer, as they were promoter group entities and that said open offer was required to be made at the time when their cumulative shareholding crossed threshold level of 15% i.e. after conversion of NCRPS into shares in the year 2004. However, it is Noticee 3's own submission that he was debarred from dealing in securities market in 2011 and not in 2004. Therefore, it is noted that the Noticee 3 and 8 have misplaced the requirements of open offer as per extant Regulation 10 of SAST Regulations, which was required to be made in 2004 and not in 2011. Hence, submission of the Noticee 3 and 8 is not tenable.

61. Further w.r.t the submission of the Noticee 1, 2, 3, 5, 7 and 8 that they had not made any gains or gained any unfair advantage out of the subject transactions and also no harm or loss or prejudice has been caused to any investor, the undersigned would like to rely on following order of Hon'ble Securities Appellate Tribunal (SAT) in the case of ***Mrs.Komal Nahata vs.SEBI (Appeal No. 5 of 2014 decided on January 27, 2014)*** *"Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure."*

62. Accordingly, in view of the above, it stands established that the Noticee 1, 2, 3, 5, 7 8 and 9 have violated Section 12A(f) of SEBI Act, 1992 r/w Reg. 10 r/w Reg. 14(1) of SAST Regulations by having failed to make an open offer.

<u>Issue No. II: If yes, does the violation, on part of the Noticee 1, 2, 3, 5, 7, 8 and 9 would attract monetary penalty under Section 15H(ii) of the SEBI Act?</u>

63. As it has been established in the paragraphs above that the Noticee 1, 2, 3, 5, 7, 8 and 9 have violated the following provisions of SEBI Act and SAST Regulations:

a) Section 12A(f) of SEBI Act, 1992 r/w Reg. 10 r/w Reg. 14(1) of SAST Regulations.

64. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of ***Chairman, SEBI vs. Shriram Mutual Fund*** {[2006] 5 SCC 361} wherein the Hon'ble Court had observed *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''*

65. Therefore, in view of the foregoing and placing reliance on the above judgement of the Hon'ble Apex Court, I am of the view that it is a fit case for penalty under Section 15H(ii) of the SEBI Act, as applicable at the relevant time, which is reproduced hereunder:

<u>Penalty for non-disclosure of acquisition of shares and takeovers</u>

15H. *If any person, who is required under this Act or any rules or regulations made thereunder, fails to—*

(ii) make a public announcement to acquire shares at a minimum price he shall be liable to a penalty not exceeding five lakh rupees

<u>Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticee 1, 2, 3, 5, 7, 8 and 9 taking into consideration the factors stipulated in Section 15J of the SEBI Act?</u>

66. While determining the quantum of penalty under Section 15H(ii) of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the SEBI Adjudication Rules which reads as under:

<u>SEBI Act, 1992</u>

<u>Factors to be taken into account by the adjudicating officer</u>

15J 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.

67. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, suffered by the investors as a result of their failure. However, the undersigned notes that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. If any

person who is required to come out with an open offer and does not do so then such person is depriving the investing public the statutory rights available to them, and then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Thus, in the present matter the facts of the case clearly bring out the default made by the Noticee 1, 2, 3, 5, 7, 8 and 9 and their failure in making an open offer despite being promoters and PACs at the relevant time. Hence, the undersigned notes that the Noticee 1, 2, 3, 5, 7, 8 and 9 failed to make an open offer and thereby have violated the relevant provisions of SEBI Act and SAST Regulations, as mentioned above.

ORDER

68. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and also taking into account judgment of the Hon'ble ***Supreme Court in SEBI vs. Bhavesh Pabari*** (2019)5 SCC 90 and in exercise of power conferred upon undersigned under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, the undersigned hereby imposes following penalty under Section 15H(ii) of the SEBI Act on the Noticee 1, 2, 3, 5, 7, 8 and 9 for violation of the aforementioned provisions of SEBI Act & SAST Regulations:

Name of the Noticees	Penal provisions	Penalty(Rs)
Mr. Ashok R Panchariya	Section 15H(ii) of the SEBI Act, 1992	Rs 5,00,000/- (Rupees Five Lakhs Only) To be paid Jointly & Severally by the Noticees
Mr. Satish R Panchariya		
Mr. Arun Ramswaroopji Panchariya		
Ms. Radhadevi S Panchariya		
Ms. Madhudevi Panchariya		
Ms. Saritadevi Panchariya		
Cavalier Securities Ltd		

69. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: **ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW**. In case of any difficulties in payment of penalties, Noticees may contact the support at portalhelp@sebi.gov.in.

70. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-I DRA -IV, Securities and Exchange

Board of India, SEBI Bhavan, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:-tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for:(like penalties/ disgorgement/recovery/settlement amount and legal charges along with order details)	

71. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

72. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

BARNALI MUKHERJEE
Digitally signed by BARNALI MUKHERJEE
Date: 2024.09.16 19:07:55 +05'30'

Date: September 16, 2024 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**