

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B(1) AND 11B(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF ALOK INDUSTRIES LIMITED

In respect of:

Noticee No.	Name of the Noticee	PAN
1	Sunil Khandelwal	AGSPK9505G
2	Alka Sunil Khandelwal	AJCPK7932N

Background in brief

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in respect of the dealings in the scrip of Alok Industries Limited (hereinafter referred to as "**Company**" / "**ALOK**") for the period January 01, 2018 to June 30, 2018 (hereinafter referred to as "**Investigation Period**" / "**IP**") to ascertain if the trades done by certain entities were in violations of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and/or rules and regulations made thereunder.
2. The *Company* was established in 1986 as a private limited company, and became a public limited company in 1993. It deals in weaving knitting, processing, home textile and garments etc. and its equity shares are listed on the BSE Limited (hereinafter referred to as "**BSE**") and National Stock Exchange of India Limited (hereinafter referred to as "**NSE**").
3. It was observed during the course of investigation that the Hon'ble National

Company Law Tribunal (hereinafter referred to as “**NCLT**”), Ahmedabad Bench had admitted the *Company* under the Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) *vide* its order dated July 18, 2017 in pursuance with an application made by the State Bank of India (hereinafter referred to as “**SBI**”). In accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC**”), a Resolution Professional (hereinafter referred to as “**RP**”) was appointed for submission of report which was required to be approved, by the Committee of Creditors (hereinafter referred to as “**CoC**”) formed in terms of the provisions of IBC.

4. As per the provisions of IBC, the initial period of 180 days for the completion of insolvency resolution process was to expire on 14th January, 2018, which was extended by the Hon’ble NCLT till April 14, 2018. However, the *Company* made a corporate announcement to both BSE and NSE disclosing that the CIRP “*expired on April 14, 2018 and the RP has not received the approval of the CoC for Resolution Plans within the time period prescribed under the Code*”. The said disclosure was made by the *Company* to NSE on April 15, 2018 at 22:18 PM and to BSE on April 16, 2018 at 08.13 AM. It is noticed that the price of the scrip moved from a price of INR 4.04 on April 13, 2018 to a price of INR 3.84 on April 16, 2018, thereby registering a fall in closing price of the scrip of ALOK by 4.9% in one single trading day (April 14 & 15, 2017 being trading holidays).
5. Subsequently, the *Company* made another corporate announcement to BSE and NSE stating that ‘*in light of the provisions of the Insolvency & Bankruptcy Code (Amendment) Ordinance, 2018, NCLT vide its order dated June 11, 2018 directed the RP to convene a meeting of the CoC and present the resolution plan for consideration and voting*’. The said announcement was made to NSE on June 12, 2018 at 15:51 PM and to BSE on June 12, 2018 at 15:54 PM. Post the announcement, the scrip of the *Company* opened at INR 2.25 on June 13, 2018 and touched a high price of INR 2.60 on June 15, 2018 amounting to a rise of 15.55% in 3 trading days.
6. Thereafter, the *Company* had announced on June 22, 2018 that “*in compliance*

with order of NCLT, proposals were put up to the CoC for consideration and, the Resolution Plan has received the assent of 72.19% of the voting share of the CoC". The said announcement was disseminated to BSE on June 22, 2018 at 14:32 P.M. and to NSE on June 22, 2018 at 14:45 P.M.

7. The investigations, *inter alia*, further revealed that:
- a. Shri Sunil Khandelwal (hereinafter referred to as '**Noticee no. 1**'/'**Sunil**') was the Chief Financial Officer (hereinafter referred to as "**CFO**") of the *Company* during the Investigation Period. Smt. Alka Sunil Khandelwal (hereinafter referred to as "**Noticee no. 2**"/'**Alka**') is the spouse of Sunil and both are hereinafter collectively referred to as '**Noticees**'.
 - b. The *Company*, in terms of the provisions of Securities and Exchange Board of India (Prohibition of Insider Trading), 2015 (hereinafter referred to as '**PIT Regulations, 2015**'), has formulated a Code of Conduct in terms of Model Code of Conduct prescribed at Schedule B of PIT Regulations, 2015. The said Code of Conduct was applicable to 'Designated Persons' which *inter-alia* included Designated Employees and their immediate relatives. By virtue of his position in the *Company*, *Noticee no. 1* appears in the list of Designated Employees of the *Company* during the Investigation Period and being the wife of *Noticee no. 1*, *Noticee no. 2* also falls in the category of 'immediate relatives' as mentioned in Code of Conduct and the said Code of Conduct was squarely applicable to both the *Noticees*.
 - c. It was further noticed that both the *Noticees* were holding joint trading account No. CIA013 with Motilal Oswal Securities Limited (hereinafter referred to as '**MOSL**') wherein *Noticee no. 2* and *Noticee no. 1* were the first and second account holders respectively. They were also jointly holding a demat account No. 1201090000228701 with CDSL during the Investigation Period. The email ID registered with the above mentioned trading and demat accounts was sokhandelwal@gmail.com.
 - d. MOSL informed SEBI that the orders in the aforementioned trading account were being placed through whatsapp chat by *Noticee no. 1* using his mobile number 98xxxxxx60. At the same time, *Noticee no. 2* also

admitted at the time of investigation that the trading in the aforementioned account was done by *Noticee no. 1*.

- e. It has been noticed from the details of the aforesaid trading account that the *Noticees* had traded in the scrip of ALOK during the Investigation Period. It was seen that the *Noticees* had sold 65,47,700 shares of the *Company* during the period March 23 to 28, 2018 and subsequently repurchased as many as 75,00,000 shares of the *Company* on May 15, 2018.
- f. In view of this, it is alleged that, by entering into opposite/contra transaction from the prior executed transaction within a period of six months from the prior transaction, the *Noticees* have violated the provisions of Clause 10 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders as prescribed under Schedule B read with Regulation 9(1) of the PIT Regulations, 2015.
- g. It is also alleged that, pursuant to the aforesaid contra trades, the *Noticees* have made a profit of INR 73,90,728/- as per the following calculations:

Table 1- Trades of the *Noticees* and Profit earned by them

Date	Buy/Sale	Number of shares	Average price(INR.)	Value (INR.)
23/03/2018	Sale	50000	2.85	142500
26/03/2018	Sale	2200000	2.83	6226000
26/03/2018	Sale	3900000	2.72	10608000
28/03/2018	Sale	397700	2.99	1189123
15/05/2018	Buy	4800000	1.66	7968000
15/05/2018	Buy	2700000	1.62	4374000
Total Buy shares -75,00,000				
Total Sale share -65,47,700				
Net shares trade-6,547,700				
Buy value of 65,47,700		INR 1,07,74,895/-		
Sale value of 65,47,700		INR1,81,65,623/-		
Profit / loss		INR 73,90,728/-		

8. Based on the findings of the investigation, as narrated above, a common Show Cause Notice ('SCN') dated May 24, 2021 was issued to the *Noticees* wherein they were called upon to show cause as to why not suitable action be taken against them in terms of the provisions of Sections **11(1), 11(4), 11B(1)**,

11B(2), 11(4A) read with Section 15HB of the SEBI Act, 1992 for committing the aforesaid alleged violations.

9. It is noticed that the SCN has been served upon the *Notices*. Subsequently, in response to the allegations made in the aforesaid SCN, the *Notices* have submitted a common reply dated June 15, 2021 wherein the *Notices* have not disputed the allegation of entering into the contra-trades as mentioned in the SCN. The *Notices* have instead submitted that the alleged contra-trades were inadvertent errors on their part. The *Notices* have also not contested the profit alleged to have been earned out of the said transactions and have rather undertaken to deposit the whole amount in SEBI-Investor Education and Protection Fund. It has been submitted that considering it to be the first violation of any kind in 32 years long career of *Noticee no. 1* with the *Company*, such a technical and inadvertent error may be considered with leniency. The *Notices* have also sought an opportunity of personal hearing in the matter.

Subsequently, the *Notices*, have *vide* email dated June 25, 2021, have also confirmed having deposited an amount of INR 73,90,728/- in SEBI-Investor Education and Protection Fund.

10. In compliance with the Principles of Natural Justice and in response to their request, the *Notices* were granted with an opportunity of personal hearing on August 24, 2021. The *Notices* appeared in person during personal hearing and reiterated the abovementioned submissions already made by the *Notices vide* their common letter dated June 15, 2021.
11. Before proceeding to deal with the allegations as recorded above against the *Notices*, I find it appropriate that for the purposes of easy reference, relevant provisions of the applicable sections, regulations, guidelines, etc. which have allegedly been contravened as per the SCN are reproduced hereunder:

PIT Regulations, 2015

Code of Conduct.

- 9.(1)** *The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees*

and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

SCHEDULE B

Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders

- 10.** *The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.*

Consideration and findings:

12. I have carefully considered the allegations made against the *Noticees* in the SCN, their reply and submissions made before me during personal hearing and the materials available on record. I note that the allegation levelled against the *Noticees* is that they had entered into contra-trades within the period of 6 months and the above mentioned trades were executed from their joint trading account maintained with MOSL. Further, the above narrated contra trades that were executed from the trading account held jointly by the *Noticees* are in violation of Clause 10 of Code of Conduct mentioned at Schedule B read with Regulation 9(1) of PIT Regulations, 2015 during the Investigation Period.
13. In terms of the provisions of Clause 10 of Code of Conduct mentioned at Schedule B of PIT Regulations, 2015, a designated person, who is declared so by the said listed company under PIT Regulations, 2015, shall not execute a contra trade within a period, which in any event shall not be less than six months. I find that the contra trade in this provision means any opposite transaction i.e. if a buy transaction in the scrip has been entered first then a

designated person is prohibited from selling shares of the company within 6 months from the date of last buy transaction. Similarly, if a designated person has sold the shares of a company then he is prohibited from buying shares of that company within a period of 6 months from the day shares were sold by the designated person.

14. I note that, in compliance of the provision of Regulation 9(1) of PIT Regulations, 2015, the *Company* has formulated its own Code of Conduct which was applicable to all its 'designated persons' as following:

The code applies to following and they shall be collectively referred as "Designated Persons"

- a. All the directors of the company*
- b. Immediate Relatives of the Directors*
- c. The designated Employee of the company*
- d. Immediate relative of designed employees of the Company*

In terms of the above definition, the Code of Conduct was *inter-alia* applicable to all the Designated Employees of the *Company*, so declared by the *Company* as well as their immediate relatives.

15. I note that *Noticee no. 1* was the CFO of the *Company* during Investigation Period. In view of the position held by him, he was appearing in the list of designated employees of the *Company*, which was submitted by the *Company* to SEBI *vide* its letter dated June 27, 2019. I also find that SEBI, in a guidance note dated August 24, 2015, specifically mentioned that spouse will be presumed to be immediate relative, unless rebutted so. Therefore, being his spouse, *Noticee no. 2* falls in the category of 'immediate relative of designated employee of the *Company*'. In this regard, I further observe that neither of the *Notices* has attempted to rebut the said presumption during the present proceedings either orally or through their written reply. In view of the above and in the absence of any rebuttal, I have no hesitation in holding that both the *Notices* fall within the category of 'Designated Person' by virtue of which the Code of Conduct, adopted by the *Company* in terms of the provisions of

PIT Regulations, 2015, was fully applicable on them.

16. I note from the facts narrated in the SCN and as presented in the above Table 1 that the *Notices* had entered into six trades viz. four buy orders and two sell orders in the scrip of ALOK during the Investigation. From a perusal of the trades alleged to have been executed by the *Notices*, it is clear that the *Notices* had sold 65,47,700 shares of ALOK in four different transactions, all during the period of March 23 to 28, 2018. Thereafter, the *Notices* had purchased a total of 75,00,000 shares of ALOK in 2 different transactions, both executed on May 15, 2018. I find that, the aforementioned purchase of 75,00,000 shares was done within 6 months of sale of 65,47,700 shares. This clearly shows that the *Notices* have entered into two contra trades within a period of 6 months of their previous sell trades.
17. As stated above, the Code of Conduct framed by the *Company* in compliance of the Regulation 9 of the PIT Regulations, 2015 provides for a 6 months' prohibition period after every transaction in the scrip of the *Company* during which, no designated person, as named by the *Company*, can enter into opposite trades/contra trades in the scrip of the *Company* unless the same is cleared by the compliance officer of the *Company*. In this regard, it is clear from Table 1 that the *Notices* had entered into contra-trades during the Investigation Period as detailed out in the above paragraphs. Further, the *Company* has submitted that no application for clearance of contra-trades was put up before the Compliance Officer during the Investigation Period and accordingly, no such clearance was granted to the *Notices* for executing the buy order trades executed in the month of May, 2018.
18. I also note that the *Notices* have also not attempted to refute the above submission of the *Company* nor the *Notices* have made any submission refuting the allegation made in the SCN pertaining to entering into contra trades during the prohibited period. The submission advanced while pleading leniency by the *Notices* is that the above buy orders were inadvertently executed and are inadvertent errors on their part. *Noticee no. 1* has further submitted that he has a clean antecedent and has never indulged into any

unfair activities during a career spanning over more than 32 years. In order to justify the leniency, it has further been submitted that the alleged violation is technical in nature and Clause 10 of Model Code of Conduct itself provides for a remedy in case a contra trade gets executed, inadvertently or otherwise, in violation of the restriction mentioned therein. It is submitted that in such a situation, it is already provided that any profit made out of such trades is liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.

19. In this regard, it is alleged that the *Noticees*, by entering into contra trades, have earned a total profit of INR 73,90,728/-, a calculation of which is given in Table 1 in this order. I note that the *Noticees* have not disputed the said computation and *vide* their email dated June 25, 2021, the *Noticees* have in fact submitted that they have since dutifully remitted the profit made out of these contra trades i.e. INR 73,90,728/- in the account maintained by SEBI-Investor Protection and Education Fund by way of RTGS having UTR No. SBI52021062530009336. I note from the material available on record that the said transaction has been confirmed by the relevant department of SEBI.
20. I further note that the sole allegation in the SCN is pertaining to the execution of contra trade and the SCN makes no allegation that the act of the *Noticees* has violated any other provision of law since nothing adverse other than entering into contra trades has been unearthed in the investigation. Further, material available on record also does not show any amount of loss caused to investor or group of investors. Also the default by the *Noticees* is not repetitive in nature. In the absence of any evidence of any other transgression, the act of the *Noticees* appear to be an inadvertent error from which they have derived no benefit, given that the profit has already been promptly deposited by them with SEBI-Investor Education and Protection Fund.
21. I note that SCN in the present matter has also been issued under Section 11(1), 11(4), 11B(1) and 11B(2) of the SEBI Act, 1992. I further note that power vested under Section 11B(2) is without prejudice to the power to issue direction in terms of power given under Section 11B(1) of the SEBI

Act, 1992. Therefore, considering the totality of fact and allegation made in the SCN, the nature of default made by the *Notices*, the observations noted above stating that the remedial measure, as mentioned in Clause 10 of Code of Conduct under Schedule B read with Regulation 9(1) of PIT Regulations, 2015 has been duly complied with by the *Notices* by depositing the profit accrued out of such contra trades in SEBI- Investor Protection and Education Fund and further by giving undertaking (by the *Notices*) to take due care in their dealings with respect to Securities Market to avoid any violation in future, I am of the view that it would be sufficient to meet the end of justice that the present proceeding is disposed of with issuance of a warning to the *Notices* to be careful in respect to their trades in future.

Directions

22. Having carefully considered the materials available on record, the submissions advanced by the *Notices*, the disgorgement of profits of contra-trades by the *Notices* and undertaking given by them, I dispose of the present proceedings with a warning to the *Notices* to be careful in respect of their trades in future.
23. A copy of this order shall be served upon the *Notices* for ensuring compliance with the above direction.

Date: September 23, 2021

Place: Mumbai

Sd/-

S. K. MOHANTY

WHOLE TIME MEMBER