BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: EAD/PM-RR/AO/78/2018-2019)

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 BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

Ms. Alka Malpani (PAN: ASVPM6259Q)

In the matter of International Conveyors Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation in the scrip of International Conveyors Limited (hereinafter referred to as "the Company") during June 12, 2009 to July 1, 2009 (hereinafter referred to as "investigation period"). During the investigation period, SEBI had observed violation of Clause 1.2 & 3.2.1 of Code of Conduct as specified under Part A of Schedule I under Regulation 12(1) & 12(3) of SEBI (Prevention of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations, 1992") by Ms. Alka Malpani (hereinafter referred to as "Noticee").

APPOINTMENT OF ADJUDICATING OFFICER

2. Shri D. Sura Reddy was appointed as Adjudicating Officer (AO) vide Order dated November 4, 2015. Subsequently, the undersigned has been appointed as Adjudicating Officer, vide Order dated March 26, 2018 (communicated to the Adjudicating Officer vide communique dated March 27, 2018) under Section 15-I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under the provisions of Sections 15HB of the SEBI Act for the alleged violation of Clause 1.2 & 3.2.1 of

Code of Conduct as specified under Part A of Schedule I under Regulation 12(1) & 12(3) PIT Regulations, 1992 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice dated May 24, 2016 (hereinafter referred to as 'SCN') was issued to the Noticee at her latest address available on record. The SCN was issued to the Noticee under the provisions of Rule 4 (1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticee and why penalty should not be imposed on the Noticee under the provisions of Sections 15HB of the SEBI Act, for the aforesaid alleged violations.

4. In the afore stated SCN, it was alleged that the Noticee being Compliance Officer of the Company and being responsible for closure of trading window has failed to implement the code of conduct and thereby violated Clause 1.2 & 3.2.1 of Code of Conduct as specified under Part A of Schedule I under Regulation 12(1) & 12(3) PIT Regulations, 1992.

5. SCN dated May 24, 2016 was issued to the Noticee at her latest address available on record. However, the same could not be served. Subsequently, attempts were made to deliver the SCN through Company/affixture, however, the same could not be affixed. As the address of the Noticee was same as that of the Company, attempt was made to serve the Notice through the Company. However, the Company couldn't deliver the SCN sighting the reason that the Noticee left the Company and her current address is not available with the Company.

6. The undelivered SCN was uploaded on the SEBI website under the head "unserved orders/show cause notices". In addition, the SCN was published in English in Statesman on May 22, 2017 and in Bengali in Bartaman Patrika on May 23, 2017.

7. Pursuant to the appointment of the undersigned as Adjudicating Officer in the instant matter, hearing notice was issued to the Noticee at the latest address available on record. However, the said hearing notice returned undelivered.

8. The undelivered hearing Notice was uploaded on the SEBI website under the head "unserved orders/show cause notices". In addition, the hearing notice was published in English in Times of India and in Bengali in Anand Bazar on September 7, 2018. In the said public notice, the Noticee was granted another hearing opportunity on September 27, 2018. However, the Noticee neither replied to the said hearing notice nor availed the hearing opportunity.

9. Facts of the case and allegations made in the SCNs:
   a) SEBI conducted an investigation in the matter of International Conveyors Limited during the period June 12, 2009 to July 01, 2009.
   b) From the investigation, it was observed that the Noticee was the Compliance Officer of the Company.
   c) During the period of investigation, it was observed that the Company had made following announcements:
      i. on June 29, 2009 at 06:31:57 pm about the audited financial results for the Quarter & the Year ended March 31, 2009 and
      ii. on June 30, 2009 @ 12:39:45 pm about the declaration of a final dividend of Rs. 2/- per share or 20% of paid up capital for the financial year 2008-09 subject to approval of shareholders in the 36th AGM.
   d) In the Board meeting dated June 29, 2009, audited financial results of the Company and recommendations of dividend on equity shares for the financial years 2008-2009 were approved.
   e) It was observed that the trading window of ICL was closed from June 24, 2009 to June 30, 2009.
   f) On perusal of the model code of conduct adopted by the Company, it was observed that the trading window should have been closed till July 01, 2009, as closure of trading window ends 24 hours after the information of

declaration of financial results / dividends was made public by the Company.

g) Further, it was also noted that the trading window was not closed when the agenda for the Board Meeting to be held on June 29, 2009 was circulated on June 19, 2009 along with draft financial results for the year ending March 31, 2009. Therefore, though the company had closed the trading window from June 24, 2009, it should have been closed from June 19, 2009 in compliance with Clause 3.2.1 of Code of Conduct as specified under Part A of Schedule I under Regulation 12 (1) of PIT Regulations.

h) Since the trading window was closed much later i.e. from June 24, 2009 instead of June 19, 2009 and was opened before time i.e. on June 30, 2009 itself, it is alleged that Noticee, being the compliance officer of the Company, (is responsible for closure of the trading window) has violated the provisions of Clause 1.2 and 3.2.1of code of conduct as specified under Part A of Schedule I under Regulation 12(1) & 12(3) of the PIT Regulations, 1992.

i) The aforesaid alleged violation attracted imposition of monetary penalty under Section 15HB of the SEBI Act, 1992.

10. As specified in the forgoing at para 5 to para 8, attempts were made to serve the SCN and Hearing Notice through various modes such as, at latest address available on record, affixture, posting the undelivered SCN and hearing notice at SEBI website under "unserved orders/show cause notices" and publishing the SCN and hearing notice in newspapers. Further, two opportunities of hearing were provided to the Noticee. However, the Noticee neither replied to the SCN and hearing notice nor availed the opportunity of personal hearing.

11. From the above, it is clear that ample opportunities have been provided to the Noticee to reply to the SCN and appear for personal hearing. Therefore, I am of the view that principle of natural justice have been followed with respect to the Noticee in the instant matter and I am compelled to decide the matter on the basis of facts/material available on record.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

12. I have taken into consideration the facts and material available on record wherein it is alleged that the Noticee has violated Clause 1.2 & 3.2.1 of Code of Conduct as specified under Part A of Schedule I under Regulation 12(1) & 12(3) of PIT Regulations, 1992.

After perusal of the material available on record, I have the following issues for consideration, viz.

a. *Whether the Noticee has violated the provisions of Clause 1.2 & 3.2.1 of Code of Conduct as specified under Part A of Schedule I under Regulation 12(1) & 12(3) of PIT Regulations, 1992?*
b. *Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act.?*
c. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

ISSUE I: Whether the Noticee has violated the provisions of Clause 1.2 & 3.2.1 of Code of Conduct as specified under Part A of Schedule I under Regulation 12(1) & 12(3) of PIT Regulations, 1992?

13. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (PIT) Regulations, 1992 which reads as under:

Relevant provisions of PIT Regulations, 1992:

Code of internal procedures and conduct for listed companies and other entities.

12(1) *All listed companies and organizations associated with securities markets including:*

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;

(b) the self-regulatory organizations recognized or authorized by the Board;

(c) the recognized stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

12(3)*All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) & (2).*

Schedule I (Part A)

Model Code of Conduct for Prevention of Insider Trading for Listed Companies

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :—

(i) officers comprising the top three tiers of the company management;

(ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

3.2 Trading window

3.2.1 *The company shall specify a trading period, to be called "trading window", for trading in the company's securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished.*

__3.2.3__ The trading window shall be, inter alia, closed at the time:—

(a) Declaration of financial results (quarterly, half-yearly and annually).

(b) Declaration of dividends (interim and final).

(c) Issue of securities by way of public/rights/bonus etc.

(d) Any major expansion plans or execution of new projects.

(e) Amalgamation, mergers, takeovers and buy-back.

(f) Disposal of whole or substantially whole of the undertaking.

(g) Any changes in policies, plans or operations of the company.

[__3.2.3A:__ The time for commencement of closing of trading window shall be decided by the company.]

14. From the facts available on record, I observe that the Noticee was responsible for closure of trading window. However, I notice that with regard to (i) audited financial results for the Quarter & the Year ended March 31, 2009 and (ii) declaration of a final dividend, the trading window was closed for a period lesser then that prescribed in the Code of Conduct. Further, I have not received any submissions from the Noticee with regard to the allegations made against her in the SCN.

In the above context, it is pertinent to refer to the Order of 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) wherein, it was, inter alia, held 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".

The Hon'ble SAT also made such proposition in case of Sanjay Kumar Tayal & Ors. Vs. SEBI (in appeal No. 68/2013) decided on February 11, 2014 viz. ".....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 levelled against them in the show cause notices"

15. Therefore, in view of the above facts, I am compelled to decide the matter based on the material available on record. In my view, the Noticee, being a compliance officer, failed to implement the Code of Conduct and thus, violated Regulation 12(1) read with Clause 1.2 of Schedule 1, Part A of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 1992.

ISSUE II: Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act.?

16. As regards the imposition of monetary penalty, I would like to quote the Order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein it was held that,

    ".....the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. .... Hence, ...once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."

17. In view of the foregoing, I am convinced that the Noticee is thus liable for monetary penalty under Section 15HB of SEBI Act for violation of Regulation 12(1) read with Clause 1.2 of Schedule 1, Part A of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 1992. The text of the said Section is as follows:

    15HB. Penalty for contravention where no separate penalty has been provided: *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.*

ISSUE III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

18. The provisions of Section 15J of the SEBI require that while adjudging the quantum of penalty, 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.

19. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failure. I note that the Noticee by failing to implement the Code of Conduct as required under SEBI (PIT) Regulations, 1992, has violated the provisions of Regulation 12(1) read with Clause 1.2 of Schedule 1, Part A of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 1992.

ORDER

20. In view of the above, after considering all the facts available on record, and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose Rs 4,00,000/- (Rupees Four Lakh Only) on Alka Malpani in terms of the provisions of Sections 15HB of the Securities and Exchange Board of India Act, 1992.

In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the Noticee.

21. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either through e-payment facility into Bank Account, the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

or by way of demand draft in favour of "SEBI-Penalties Remittable to Government of India", payable at Mumbai.

22. The Noticee shall forward the following details / confirmation of penalty so paid to the Chief General Manager, Enforcement Department, SEBI, Mumbai.

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:	Penalty

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

Date: March 28, 2019 **PRASANTA MAHAPATRA**

Place: Mumbai **ADJUDICATING OFFICER**