BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/PM/GD/2022-23/16077)

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

In respect of

Madhusudan Vasudev Nagori

(PAN: AACPN3180C)

In the matter of Alok Industries Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted an examination in the dealings in the scrip of Alok Industries Limited (hereinafter referred to as **ALOK/Company**) to examine the violations of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the **SEBI Act, 1992**), Rules, Regulations, if any, during the period January 01, 2018 to June 30, 2018 (hereinafter referred to as **IP**). The Company is listed on Bombay Stock Exchange (**BSE**) and National Stock Exchange (**NSE**). It was observed that Madhusudan Vasudev Nagori (hereinafter referred to as "**Noticee"**) failed to comply with clause 10 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders as specified under Schedule B read with (r/w) regulation 9(1) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as **PIT Regulations, 2015**) while dealing in the scrip of Company. Accordingly, SEBI initiated adjudication proceedings against the Noticee for the aforesaid alleged violation of PIT Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned has been appointed as the Adjudicating Officer, under section 15-I of the SEBI Act, 1992 r/w rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (herein after referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under section 15HB of the SEBI Act, 1992, the alleged violation of clause 10 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders as specified under Schedule B read with (r/w) regulation 9(1) of PIT Regulations, 2015. The same was conveyed to the undersigned vide communique dated June 10, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice ref. SEBI/HO/EAD-8/PM/SM/20622/1/2021 dated August 24, 2021 (hereafter referred to as **SCN**) was served to the Noticee in terms of the provisions of rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under the provision of section 15HB of the SEBI Act, 1992

4. The allegations levelled against the Noticee in the SCN are summarized below as follows:

   a. *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 in BSE and NSE. Pursuant to an application made by the State Bank of India (hereinafter referred to as "**SBI**"), the Hon'ble National Company Law Tribunal (hereinafter referred to as "**NCLT**"), Ahmedabad Bench, passed an order dated July 18, 2017 for admitting the Company under the Corporate Insolvency Resolution Process (hereinafter referred to as*

*"**CIRP**") in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**Code**") and a Resolution professional (hereinafter referred to as "**RP**") was appointed for submission of report and approval of the same if any by the Committee of Creditors (hereinafter referred to as "**CoC**"). As per the provisions of the Code, the initial period of 180 days, for the insolvency resolution process was to expire on 14th January, 2018, which was extended by the Hon'ble NCLT up till April 14, 2018.*

b. *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". It is observed that the said disclosure was made to NSE on April 15, 2018 at 22:18 PM and to BSE on April 16, 2018 at 08.13 AM. It is also observed that the price of the scrip moved from a close price of INR 4.04 on April 13, 2018 to a close price of INR 3.84 on April 16, 2018 i.e. registering a fall in price by 4.9% in one trading day.*

c. *Subsequently, the Company made another corporate announcement to BSE and NSE wherein it had disclosed 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. It is also noticed that 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 which amounts to a rise of 15.55% in 3 trading days.*

d. *The Company has 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 made to BSE on June 22, 2018 at 14:32 P.M. and to NSE on June 22, 2018 at 14:45 P.M.

e. *From the details submitted by the Company vide its letter dated June 27, 2019, it is seen that the Noticee appears in the list of Designated Employees of the Company, during the Investigation Period . Further, it is observed that Noticee had made transactions in the scrip of ALOK and the same has been admitted by the Noticee vide his e-mail dated February 14, 2021. The details of all such trades executed by the Noticee in the scrip of during the Investigation Period are as below:*

Table-1: Trades of the Noticee in the scrip of the Company

Trade date	***Buy Quantity***	***Sell Quantity***
16/01/2018		*25000*
10/04/2018		*100412*
12/04/2018		*249588*
11/06/2018		*5000*
28/06/2018		*100000*
Total		***380000***
17/01/2018	*25000*	
08/05/2018	*500000*	
12/06/2018	*5000*	
Total	***530000***	

f. *It is observed from the above table that the Noticee have sold 3,80,000 shares of ALOK and purchased 5,30,000 shares of the Company during the period April 10, 2018 to June 28, 2018.*

g. *In terms of the provision of regulation 9(1) of PIT Regulations, 2015, every listed company is required to formulate a Code of Conduct to regulate, monitor and report trading by its employees and other connected persons on the lines of Model Code of Conduct provided at Schedule B to the PIT Regulations, 2015. Accordingly, the Company has also formulated a Code* *of Conduct in terms of Model Code of Conduct prescribed at Schedule B of PIT Regulations, 2015.*

h. *In terms of the above Code of Conduct of the Company, the Noticee being the president of the Company falls in the category of "Designated Employee of the Company". Being the designated person, Noticee was prohibited from entering into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. It is observed from the trades of the Noticee during the Investigation Period, as mentioned in table 1 above, that the Noticee have executed trades within six months of prior in the scrips of ALOK which amounts to contra trades.*

i. *In view of the above it is alleged that the Noticee being Designated person of the Company, had taken opposite position within 6 month period while trading in the scrip of ALOK and has allegedly violated the provision 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.*

j. *It has also been alleged that pursuant to the aforesaid contra trades, the Noticee made a profit of INR 6,96,646 /- as per the following calculations:*

Table-2: Profit earned by the Noticee from their contra trades

Date	Buy/Sale	Number of shares	Average price (INR.)	Value (INR.)
16/01/2018	sale	25000	4.45	111250
17/01/2018	buy	25000	4.15	103750
10/04/2018	sale	100000	4.15	415000
10/04/2018	sale	412	4.4	1813
12/04/2018	sale	249588	3.68	918483.8
08/05/2018	buy	500000	1.85	925000
11/06/2018	sale	5000	2.57	12850
12/06/2018	buy	5000	2.3	11500
28/06/2018	sale	100000	4	400000

Total Buy shares –530000 *Total Sale share -380000* *Net shares trade-380000*	
Buy value of 380000	*Rs.762750*
Sale value of 380000	*Rs.1459397*
Profit / loss	*Rs.696646*

k. In light of the above, it is alleged that by indulging in contra trades Noticee violated the provision 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.

5. The Noticee *vide* email dated September 07, 2021 submitted his reply to the SCN. The submissions of the Noticee are summarized hereunder:
    a. Noticee is in receipt of SCN dated August 24, 2021.
    b. Noticee requests to kindly condone the trades in shares of Alok industries and not to levy any penalty.
    c. In light of the company being admitted to Insolvency resolution process and no clarity on its future, noticee sold shares in anxiety to avoid loss.
    d. Noticee was never involved in any price rigging and never had any information other than generally available information about resolution process. Subsequently when there was announcement that Alok industries may not be liquidated, noticee purchased shares in confusion to make up for loss, but later sold all holdings without any major gain.
    e. Noticee undertakes and assures that all its future trades will be done in adherence to all applicable provisions of law.

6. *Vide* Email dated March 29, 2022, The Noticee was granted an opportunity of hearing on April 05, 2022. Noticee availed the aforesaid hearing opportunity on

the scheduled date. Noticee reiterated the submissions made *vide* Email dated September 07, 2021.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have taken into consideration the facts and material available on record. The issues that arise for consideration in the present case are as follows:
   I. Whether the Noticee has violated the provision 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?
   II. Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act, 1992?
   III. If the answer to Issue No. 2 is in affirmative, then what should be the quantum of monetary penalty?

Issue I. Whether the Noticee has violated the provision 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?

8. Before moving forward, it is pertinent to refer to the relevant provision of the PIT Regulations which are alleged to have been violated. The said provision is provided 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 employee and other connected person 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.

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

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.

9. I have considered the allegations and charges levelled against the Noticee, submissions of the Noticee and the relevant material available on record. On perusal of reply submitted by notice during investigation and after issuance of show cause notice, I note that the Noticee was an employee holding the post of president in the company. I note from the Register of Designated Persons, Noticee was a Designated Person under PIT Regulations 2015.Hence Noticee was an "insider" as per Regulation 2(1)(g) of PIT Regulations 2015.

10. From the reply of the Noticee, I note that the Noticee has not disputed allegation pertaining to non-obtaining of Pre clearances, execution of contra trades, non-making of disclosures.

11. I further note that the as per the trading details, it was observed that the Noticee had sold 3,80,000 shares of ALOK and purchased 5,30,000 shares of the Company during the period April 10, 2018 to June 28, 2018. Noticee had traded in the scrip of ALOK during the trading window closure period. Further Noticee *Vide* Email dated February 14, 2021, admitted to have taken opposite position within 6 month period while trading in the scrip of ALOK. Thus violating the provision 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.

12. Noticee in its reply has *inter alia* submitted that he executed the contra trades in anxiety to avoid loss as the company was under insolvency resolution process. The said explanation coming from a designated person is extremely casual, imprudent and uncalled for. Being a designated person, Noticee was bound to comply with SEBI PIT Regulations and should have been aware of the regulatory requirements. The failure on the part of the Noticee cannot be considered as an excuse from compliance with the PIT Regulations. In view of the facts recorded hereinabove, I conclude that the Noticee by executing contra trades, non-obtaining of preclearance and non-making of disclosures have violated the provisions of Clause 10 of Code of Conduct under Schedule B of Regulation 9(1) of the PIT Regulations. Therefore, In view of the same, I am not inclined to accept said submission of the Noticee.

13. I also note from the material available on record that Noticee had remitted the amount of Rs.6,96,646 (alleged cumulative profit arising from execution of contra trades) to the "SEBI's Designated bank account".

14. I find it relevant to refer to the judgment of the Apex Court in SEBI vs Shri Ram Mutual Fund, (Appeal Civil 9523-9524 of 2003) dated May 23, 2006, wherein it was held that "in our opinion, *mens rea* is not an essential ingredient for contravention of the provisions of a civil act". In view of the aforesaid judgment, I find it difficult to exercise leniency on grounds such as ignorance or lack of intention. If leniency is observed in such cases then every offender would seek impunity citing aforesaid reasons and the legislative intent of the provisions of PIT Regulations would be defeated. The key objective of SEBI Act is protection of the interests of the investors. The requirement to submit disclosures under the PIT Regulations are sacrosanct as they enable the public to make an informed investment decision in a timely manner. By not submitting the requisite

disclosures, the concerned persons deprive the investing public of the statutory rights available to them.

15. In view of the above, I hold that Noticee carried out the impugned trades during the window closure period, without obtaining pre-clearance, and therefore, violated clause 10 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B.

Issue II. Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act, 1992

16. I note that the Apex Court in the case of SEBI vs Shri Ram Mutual Fund (Appeal Civil 9523-9524 of 2003) dated May 23, 2006 has held that "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."

17. Further, vide order dated April 26, 2013 the Hon'ble Supreme Court of India in the matter of N Narayanan vs. SEBI (Appeal Nos. 4112-4113 of 2013) held as under:-

"SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate market abuse and that we are governed by the Rule of Law. Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and market security is our motto."

18. In view of the above, I am convinced that it is a fit case to impose monetary penalty on the Noticee under the provisions of Section 15HB of the SEBI Act, 1992, which reads as under

Penalty for contravention where no separate penalty has been provided.

15HB. 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 which may extend to one crore rupees.]

Issue III. If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

19. While determining the quantum of penalty under 15HB of SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995 which read as under: -

SEBI Act, 1992

15J While adjudging quantum of penalty under [110][15-I or section 11 or section 11B, the Board or 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.

[Explanation.—For the removal of doubts, it is clarified that the power […] to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

20. In the instant case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the aforesaid violations by the Noticee is not available. Further, it does not show that the said failure is repetitive from the material available on record. However, the violations by a designated person, as found in this case, would defeat the purpose of principles enshrined under the PIT Regulations keeping in mind the mandate of protecting the interest of investors.

ORDER

21. Taking into account all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, I hereby impose the following penalties on the Noticee:

Name of the Noticee	**Violation and penalty provisions**	**Penalty (Rs)**
Madhusudan Vasudev Nagori	15HB of SEBI Act, 1992 Clause 10 of Code of Conduct under Schedule B of Regulation 9(1) of the PIT Regulations	Rs 2,00,000/- (Rs Two lakhs only)

22. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR 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

23. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

24. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the SEBI.

Place: Mumbai **PRASANTA MAHAPATRA**

Date: April 21, 2022 **ADJUDICATING OFFICER**