

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/DSR/ VVK/ 178 /2014]**

**UNDER SECTION 15-I OF 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
Shri SANJAY JOGLEKAR
(PAN ABNPJ8225G)
In the matter of Mahindra & Mahindra Limited**

Mahindra & Mahindra Limited (hereinafter referred to as "**M&M / Company**"), whose shares are listed at the National Stock Exchange of India Limited (hereinafter referred to as "**NSE**") and The Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**"). **M&M** vide its letter dated 27th December, 2013 reported to the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), upon confirmation by the NSE, that the designated employee (**DE**) of the Company, *inter alia*, Mr. Sanjay Joglekar (hereinafter referred to as "**Noticee**"), Executive Vice President and Chief Financial Officer, Systech Sector of the M&M has dealt in the shares of the Company on 14th November, 2013 i.e. during the closure of trading window . (hereinafter referred to as "**Period of Examination / PoE**") on account of the announcement of Unaudited Financial Results of the Company for the second quarter and half year ended September 30, 2013. The results were announced on November 13, 2013.

2. Thereafter, SEBI examined the possibility of trading on the basis of unpublished price sensitive information in violation of SEBI (Prohibition of Insider Trading)

Regulations,1992 (hereinafer referred to as the "**PIT Regulations,1992**"), if any, in the matter.

3. It was observed that that the Noticee had traded in the shares of the company on 14th November, 2013 i.e. during closure of trading window from October 1, 2013 to November 14,2013 by selling 1000 shares of the Company on the NSE platform for a total amount of Rs.9,23,407/-. As a result of this sale transaction, the noticee was required to make disclosures under Regulation 13(4) read with Regulation 13(5) of the PIT Regulations,1992 to the company and the stock exchange viz. NSE within the specified two days which the noticee allegedly failed to comply with. The noticee's sale transaction is given as below : -

| Date | Stock Exch. | Gr Buy Vol | Gr Sell Vol | Net Trd Vol | Gr Trd Vol | Gr Buy Value | Gr Sell Value | Vol% - Gr Trd Vol/Mkt | Vol% - Net Trd Vol/ Mkt Net |
|-------------------------------------|-------------|------------|-------------|-------------|------------|--------------|---------------|-----------------------|-----------------------------|
| SANJAY JOGLEKAR (ABNPJ8225G) | | | | | | | | | |
| 14/11 /2013 | NSE | 0 | 1000 | -1000 | 1000 | 0 | 923407 | 0.03 | 0.09 |

Appointment of Adjudicating Officer :

4. I have been appointed as the Adjudicating Officer under Section 15-I of the Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') vide order dated 6th May,2014 to inquire into and adjudge under Section 15A(b) of the Securities and Exchange Board of India Act,1992 (hereinafter referred to as the " **SEBI Act, 1992** "), the alleged violation of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations, 1992 committed by the Noticee.

Notice, Reply & Personal Hearing:

5. Accordingly, the Show Cause Notice dated the 28th May, 2014 (hereinafter referred to as the '**SCN**') was issued to the Noticee in terms of Rule 4 of the Rules requiring it to

show cause as to why an inquiry should not be held for the alleged violations. The Noticee vide its reply dated the 10th June, 2014 made submissions, which are, *inter alia*, as follows : --

" * *Concerning the disclosure, I understand that pursuant to the SEBI (Prohibition of Insider Trading) Regulations,1992, the obligation to make the disclosures as a result of change in shareholding, as specified, is on a " director of the listed company" or an "officer of the listed company."*

* *Since I am neither a "Director" nor an "officer" of M&M as I do not hold any position defined mentioned in regulation 2(g) of the Insider Trading Regulations; clause (30) of Section 2 of the Companies Act,1956, Section 2(3)) of the Companies Act,1956 and Sections 2(59), 2(51) and 2(53) of the Companies Act,1956.*

* *While I am employed in M&M, I have been dealing with auto component business of M&M which is distinct and separate from M&M's core business of manufacturing SUVs and Tractors. Moreover, I am not involved in preparation of financials or accounts of M&M in any way.*

* *Incidentally, the transaction for sale of 1000 shares of M&M was inadvertently carried out during trading window closure and only 10-20 minutes before completion of 24 hours of the declaration of results. In the morning of 14th November, I saw that the results were published in the Business Standard. This led me to believe that the results are in public domain and did not realize that the requirement of 24 hours was not completed. As such, the transaction was not based on any Unpublished Sensitive Information as the information was already in public domain on 13th November,2013 i.e. one day prior to my above mentioned trade.*

* *The purpose of sale was to invest in Tax free bonds. "*

6. In the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the said Rules, an opportunity of personal hearing was granted to the Noticee on 5th August, 2014. The noticee vide his letter dated 28th July, 2014 expressed his inability to attend the hearing and requested for a new date. Thereafter, the noticee was granted another opportunity of hearing on 13th August, 2014 which was attended by the noticee. During the hearing, the noticee reiterated the submissions made vide letter dated 10th June, 2014.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the charges against the Noticee, reply of the noticee and the other material available on record.

The issues that arise for consideration in the present case are :-

(a) Whether the Noticee has violated the provisions of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations, 1992?

(b) Does the violation, if any, on the part of the Noticee attract any penalty under Sections 15A(b) of the SEBI Act, 1992?

(c) If yes, what should be the quantum of penalty?

8. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations, 1992 which read as under :-

Disclosure of interest or holding in listed companies by certain persons - Continual Disclosure

13. Continual disclosure.

(3)

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(4A)

(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of :

- (a) the receipts of intimation of allotment of shares, or
- (b) the acquisition or sale of shares or voting rights, as the case may be."

9. I observe that the Noticee had sold 1000 shares of M&M on 14th November, 2013 on the NSE platform for a total amount of 9,23,407/-. Since the change exceeded Rs.5 lakh in value, the same was required to be disclosed to the Company and the stock exchange within the specified two days under regulation 13(4) read with regulation 13(5) of the PIT Regulations, 1992. However, it is observed that the noticee admittedly failed to make the necessary disclosures in this regard.

10. The Noticee vide his reply dated 10th June, 2014, submitted that he was neither a "director" nor an "officer" of M&M as he does not hold any position in terms of the definition of "officer" as per regulation 2(g) of the PIT Regulations, 1992, Section 2(30) of the Companies Act, 1956 and Section 2(51) & Section 2(59) of the Companies Act, 2013, therefore, the requirement of filing disclosures under regulation 13(4) of the PIT Regulations, 1992 does not apply to him. During the hearing, the noticee informed that he is holding the position of a 'Executive Vice President' and 'Chief Financial Officer' - Systech Sector of Mahindra & Mahindra Ltd.

11. Now, I would like to refer to the relevant provisions of law which read as under :-

i) **Regulation 2(g) of the PIT Regulations,1992** - "*Officer of a company' means any person as defined in Clause (30) of Section 2 of the Companies Act,1956 (1 of 1956) including an auditor of the company*".

ii) **Section 2(30) Companies Act, 1956-** – "*Officer includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act*”;

iii) **Section 2(59) of the Companies Act,2013** "*officer" includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act*”; and,

iv) **Section 2(51) of the Companies Act,2013,** "*key managerial personnel", in relation to a company, means -*

- (i) *the Chief Executive Officer or the managing director or the manager;*
- (ii) *the company secretary;*
- (iii) *the whole-time director;*
- (iv) *the Chief Financial Officer; and*
- (v) *such other officer as may be prescribed."*

12. At this Juncture, It is relevant to refer to the Judgment of the Hon'ble Securities Appellate Tribunal in Sundaram Finance Ltd V SEBI (Appeal no. 69 of 2010 - decided by 3 member bench) wherein it was observed that "*....A reading of the aforesaid definition makes it clear that it is an inclusive definition. Apart from what the word 'Officer' means, it includes all that is stated therein. In other words, the definition does not exhaust all persons who otherwise come within its ambit or scope. While the definition says that it includes the persons specified therein, it doesn't say who are all the persons who will come within the term. We are of the view that an 'Officer' means a person holding an appointment to an office which carries with it an authority to give*

directions to other employees. Thus, an 'Officer' as distinct from a mere employee is a person who has the power of directing any other person or persons to do anything whereas an employee is one who only obeys. Any person who occupies a position of responsibility in a company will be an 'Officer' and this has been clarified by the Department of Company Affairs, government of India as per its letter dated October 7, 1963."

13. I note that, from the Email dated 27-01-2014 received by SEBI from the Compliance officer of M&M, the Grade Structure of M&M is as follows:

Chairman & Managing Director

Executive Director,

President,

L1 -Strategic,

L2 -Strategic,

L2 -Executive,

L3- Executive

L3- Department head

L4 -Department head

L5 -Department head

L5 -Managerial

L6- Managerial

L7 -Managerial

L7- Operational

L8 -Operational

L9 -Operational

14. I do not find merit in the submissions made by the noticee inasmuch as M&M vide the said Email confirmed that the noticee being the Executive Vice President and the Chief Financial Officer belongs to Grade '**L1-Strategic**'. Therefore, all other employees in executive and managerial grade from 'L 2- Strategic to 'L9- Operational ' are subordinate to the noticee which means that the noticee is clearly holding a higher *position of responsibility* capable of giving directions to his subordinates

15. In view of the above findings, I conclude that the Noticee is an 'Officer' within the meaning of Section 2(30) of Companies Act, 1956 read with Section 2(51) and 2(59) of the Companies Act, 2013 and Regulation 2(g) of the PIT Regulations. In view of the above, I conclude that the Noticee has violated the provisions of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations, 1992, thus, warranting monetary penalty under Section 15A(b) of the SEBI Act, 1992.

16. Section 15A(b) of the SEBI Act, 1992 reads as under :-

" 15A. Penalty for failure to furnish information, return, etc. *If any person who is required under this Act or any rules or regulations made there under:-*

(a).....

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. "

17. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shriram Mutual Funds [2006] 68 SCL (216) SC held that " *once a violation of statutory regulation is established, imposition of penalty becomes sine qua non of violation and the intention of the parties committing such violation becomes totally irrelevant. Once the contravention is established then penalty is to follow*".

18. The Hon'ble Securities Appellate Tribunal in the matter of Milan Mahindra Securities Private Limited vs SEBI (Appeal No. 66 of 2003) observed that " the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."

19. While determining the quantum of penalty under Section 15A(b) of the SEBI Act,1992, it is important to consider the factors stipulated in Section 15-J of the SEBI Act,1992 which reads as under :-

15J Factors to be taken into account by the adjudicating officer :

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.*

20. It is difficult, as per the material available on record, to quantify any gain or unfair advantage accrued to the Noticee and the extent of loss suffered by the investors as a result of the default of the Noticee. It is observed that the violation is not repetitive in nature. The disclosures made under Regulation 13(4) read with regulation 13(5) of the PIT Regulations,1992 are made public only through the Stock Exchange. It is with this end in view that the regulations require the making of disclosures so that investing public is not deprived of any vital information. The disclosures made to the stock exchange are the means to attain such end and, therefore, dissemination of true and complete information is mandatory.

ORDER

21. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I(2) of the SEBI Act, 1992 read with Rule 5 of the said Rules, I hereby impose a penalty of ₹ 2,00,000/- (Rupees two lakh only) on Mr. Sanjay Joglekar under Section 15A(b) of the SEBI Act, 1992. In my view, the penalty is commensurate with the default committed by the Noticee.

22. The penalty amount shall be paid by the Noticee through a Demand Draft drawn in favour of “ SEBI – Penalties Remittable to Government of India” and payable at Mumbai, within 45 (forty five) days of receipt of this order. The said Demand Draft should be forwarded to the Division Chief, Integrated Surveillance Department (ISD), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, ‘G’ Block, Bandra-Kurla Complex, Bandra (E), Mumbai – 400 051.

23. In terms of Rule 6 of the said Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date : August 21,2014
Place: Mumbai

D.SURA REDDY
ADJUDICATING OFFICER