

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD-2/DSR/RG/ 174 /2014]**

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**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 Pavan Kumar Sodani [PAN: AAXPS8134J]**

**In the matter of**  
**Mahindra & Mahindra Limited**

**Background:**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination into the irregularity in trading in the shares of Mahindra & Mahindra Limited (hereinafter referred to as 'MML'), a company listed on the Bombay Stock Exchange (BSE) for the period January 01, 2013 to February 09, 2013 and into the possible violation of the provisions of the SEBI Act, 1992 (herein after referred to as the Act) and various Rules and Regulations made there under.
2. SEBI had received a letter dated April 12, 2013 from MML informing that few of the designated employees of the company had dealt in shares of MML when the trading window was closed for declaration of unaudited financial results of the company for the quarter ended on December 31, 2012.
3. The examination revealed that Shri Pavan Kumar Sodani (hereinafter referred to as the Noticee), one of the designated employees of the company, had traded in the scrip of MML for more than ₹ 5 lakh in value and had entered into opposite transactions within six months following the prior transaction which

was in violation of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 read with Regulation 12(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations). Further, it was observed that upon the said transactions entered into by the Noticee, his holding in the company exceeded 5 lakh in value which required him to make necessary disclosure as prescribed under Regulation 13(4) read with Regulation 13(5) of the PIT Regulations. However, the same had not been made. SEBI has, therefore, initiated adjudication proceedings under the Act to inquire into and adjudge the alleged violation of the provisions of law by the Noticee.

**Appointment of Adjudicating Officer:**

4. The undersigned has been appointed as the Adjudicating Officer vide SEBI Order dated October 03, 2013 under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15A(b) of the Act for the alleged violation of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations and under Section 15HB of the Act for the alleged violation of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 read with Regulation 12(1) of the PIT Regulations by the Noticee.

**Notice, Reply & Personal Hearing:**

5. Accordingly, a notice dated November 11, 2013 (hereinafter referred to as the 'SCN') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring to show cause as to why an inquiry should not be held against him for the alleged violations. However, the said SCN was returned undelivered. In view of the same, vide letter dated December 05, 2013, the said SCN was sent for affixture at the last known address of the Noticee. The affixture report is on record. Thereafter, in the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee vide notice dated March 07, 2014 on March 21, 2014. However, the said notice was also returned undelivered. Vide letter dated June 07, 2014 the Noticee acknowledged the receipt of the SCN and

replied to the said SCN. The Noticee also informed his changed address for future correspondence and requested for an opportunity of hearing in the matter. Accordingly, another opportunity of personal hearing was granted to the Noticee on July 08, 2014. The Noticee attended the said hearing on the scheduled date and reiterated the submissions made in his reply dated June 07, 2014.

### **Consideration of Issues, Evidence and Findings**

6. I have carefully perused the charges against the Noticee as per the SCN, written submissions and the materials & documents as available on record. The issues that arise for consideration in the present case are:

***a) Whether the Noticee has violated the provisions of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 read with Regulation 12(1) of the PIT Regulations?***

***(b) Whether the Noticee has violated the provisions of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations?***

***(c) Does the violation, if any, on the part of the Noticee attract any penalty under Section 15A(b) and 15HB of the SEBI Act?***

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

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

#### **Relevant provisions of PIT Regulations:**

***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 authorised 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.

**Schedule I:- (PART A)**

**4.2** All directors/ officer/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction, i.e., sell or buy any number of shares during the next six months following the prior transaction. All directors / officers / designated employees shall also not take positions in derivative transactions in the shares of the company at any time.

**Continual disclosure.**

**13(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.

**13(5)** The disclosure mentioned in sub-regulations (3) and (4) 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.

8. I find from the SCN that MML is a company listed on BSE. The Noticee is one of the designated employees of MML. I further find that the Noticee had traded in the shares of MML when the trading window was closed for declaration of unaudited financial results of the company for the quarter ended on December 31, 2012. It was observed that the Noticee had traded in the scrip for more than ₹ 5 lakh and entered into opposite transactions within six months following the prior transaction. The summary of trades executed by the Noticee during the relevant period is as under:

| Name of the Employee | PAN number | Trade dated | Buy quantity | Sell quantity | Buy Value | Sell value |
|----------------------|------------|-------------|--------------|---------------|-----------|------------|
| Pavan Kumar Sodani   | AAXPS8134J | 07.01.2013  | 0            | 500           | 0         | 477500     |
|                      |            | 09.01.2013  | 0            | 500           | 0         | 483500     |
|                      |            | 17.01.2013  | 1000         | 0             | 900000    | 0          |

9. From the above table, it is observed that on January 07, 2013, the Noticee sold 500 shares for a value of ₹ 477500. Further, again on January 09, 2013 he sold 500 shares for a value of ₹ 483500 and immediately on January 17, 2013 purchased 1000 shares for ₹ 900000. The Noticee being the designated employee of MML was not supposed to enter into opposite transactions within six months of the prior transaction. However, as the Noticee transacted in the shares of MML within six months of the prior transaction, he was alleged to have violated the provisions of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 read with Regulation 12(1) of the PIT Regulations. Further, upon the said transactions, the holdings of the Noticee exceeded ₹5 lakhs in value which required him to make necessary disclosures as prescribed under Regulation 13(4) read with Regulation 13(5) of the PIT Regulations. As the said disclosures were not made, the Noticee was also alleged to have violated the said provisions of law.
10. The Noticee vide his reply dated June 07, 2014 submitted that he is working with MML and was handling the profile of Accounts Payable, Budgeting, Sales Tax and Accounts closure at the relevant time and now is working as Credit and Commercial Head. By virtue of his profile, he was not having any access to any unpublished price sensitive information and was handling only a part of the operations. The Noticee further submitted that he had given standing instructions to his broking manager to sell the shares of MML if the price reaches a particular level i.e. ₹ 950/- per share. Based on the said instructions, the broker had called the Noticee on the day when the price of MML shares reached that level and the Noticee agreed for the sale of 1000 shares. He stated that he did not realize that the trading window was closed during that period as per the Insider Trading Regulations. The said transactions were entered into unknowingly and without any intention to violate the SEBI Rules. Immediately, upon concluding this trade, the Noticee came to know that he had entered into a transaction which is in violation of PIT Regulations and therefore, he wished to square off the transaction to undo this violation. The Noticee accordingly instructed the broker to enter into a reverse transaction on that day without any intention to make money out of the said transaction. In view of the

said submissions, the Noticee states that he may be pardoned and exempted from any penalties under the Act as the same was inadvertent.

11. From the material available on record and the submissions made by the Noticee, I find that the Noticee is the designated employee of MML. Vide letter dated April 12, 2013, MML had informed SEBI that few of its designated employees had dealt in shares of MML when the trading window was closed for declaration of unaudited financial results of the company for the quarter ended on December 31, 2012. I find from para 9 and 10 above that the Noticee being the designated employee of the company had transacted in the shares of MML during the window closure period and also had entered into opposite transaction within six months from the prior transaction which was in complete violation of Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 read with Regulation 12(1) of the PIT Regulations. Upon the said transactions, the holdings of the Noticee in the company exceeded 5 lakhs in value and therefore, he was required to make necessary disclosures to the company and to the stock exchange where the shares of the company are listed within two days of acquiring or selling the shares as per the PIT Regulations.
12. I find from the submissions made by the Noticee that he has admitted the violation and the same was done due to oversight and unawareness of the provisions of Law. The said submission cannot be accepted inasmuch as ignorance of law cannot be an excuse. Further, I note that the Noticee has not made any submissions as regards the alleged violation of disclosure provisions of PIT Regulations. In view of the same, I conclude that the Noticee has violated Clause 4.2 of the Model Code of Conduct specified in Part A of Schedule 1 read with Regulation 12(1) of the PIT Regulations and Regulation 13(4) read with Regulation 13(5) of the PIT Regulations and thus, is liable for imposition of penalty under Section 15A(b) and 15HB of the Act which read 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.*

***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 there under for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

13. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram 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.*"

14. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 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.*

15. I observe that from the material available on record, it is difficult to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default of the Noticee. The said defaults on the part of the Noticee are not repetitive in nature.

## **ORDER**

- 16.** 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 read with Rule 5 of the Adjudication Rules, I impose a penalty of ₹ 2,00,000 (Rupees Two Lakhs Only) under Section 15A(b) of the SEBI Act and ₹2,00,000 (Rupees Two Lakhs Only) under Section 15HB of the Act, thus, a total penalty of ₹ 4,00,000 (Rupees Four Lakhs Only) on the Noticee viz. Shri Pavan Kumar Sodani in the matter. In my view, the penalty is commensurate with the default committed by the Noticee.
- 17.** The penalty amount as mentioned above shall be paid by the Noticee through a duly crossed demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, ISD, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
- 18.** In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to Noticee and also to Securities and Exchange Board of India.

**Date: August 7, 2014**

**Place: Mumbai**

**D. SURA REDDY**

**ADJUDICATING OFFICER**